

Vol
2015

United States
Circuit Court of Appeals

For the Ninth Circuit.

C. E. HULL, Receiver of The Nogales National Bank of Nogales, Arizona, a national banking association,

Appellant,

vs.

SANTA CRUZ COUNTY, a body politic and corporate,

Appellee.


Transcript of Record

Upon Appeal from the District Court of the United States for the District of Arizona.

FILED

JAN 18 1937

PAUL P. O'BRIEN,
CLERK



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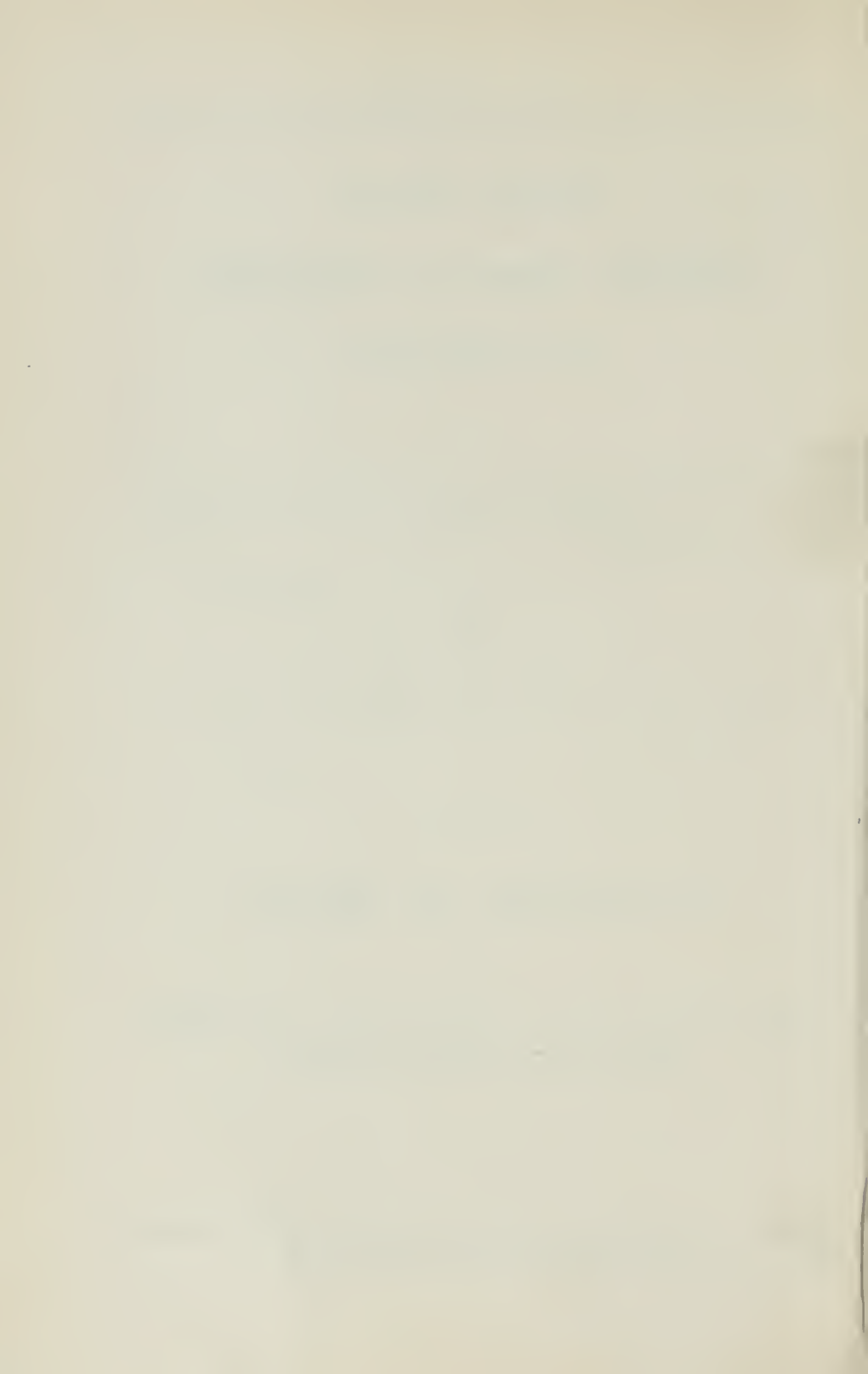
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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Additional Party Defendant:	
Ackley, Order Making.....	31
Dumbauld, Order Making.....	31
Answer:	
Of Defendant Ackley to Plaintiff's Com- plaint	31
Of Defendant Ackley to Counterclaim of Defendant Donald	37
Of Defendant Donald to Plaintiff's Com- plaint	15
Of Defendant Dumbauld to Plaintiff's Complaint	32
Of Defendant Dumbauld to Counterclaim of Defendant Donald.....	43
Of Plaintiff Santa Cruz County to Coun- terclaim of Defendant Donald.....	33
Appeal:	
Acceptance of Service of Pleadings on.....	89
Assignments of Errors on.....	81
Clerk's Certificates on.....	92
Citation on	93

Index	Page
Notice of Filing Praeceptum for Record on.....	91
Petition for	85
Praeceptum for Transcript on.....	89
Order Allowing	87
Attorneys of Record.....	1
Complaint of Santa Cruz County.....	1
Counterclaim of Defendant Donald.....	15
Decree	61
Objections Thereto	58
Memorandum Decision	48
Minute Entries:	
Additional Parties Defendant, Order	
Bringing in	30
Decree, Order for.....	56
Hearing on Motion to Dismiss Counter-	
claim and Motion to Strike Answers.....	40
Ruling Thereon	41
Hearing on Objections to Decree.....	60
Ruling Thereon	60
Hearing on Petition for Appeal.....	87
Statement of Evidence, Order Settling.....	81
Trial, Order Setting for.....	46
Trial, Proceedings Thereof.....	47

	Index	Page
Removal:		
Notice of Filing Record on.....		14
Order for		13
Petition for		8
Bond on		12
Substitution of Parties, Order Therefor.....		57
Statement of Evidence.....		66

ATTORNEYS OF RECORD.

STEPHEN D. MONAHAN, Esquire,
LaVille de Paris Building
Nogales, Arizona
Attorney for Appellant.

JAMES V. ROBINS, Esquire,
Trust Building,
Nogales, Arizona
Attorney for Appellee. [3*]

In the Superior Court of the State of Arizona, in
and for the County of Santa Cruz.

E-234-Tuc.

SANTA CRUZ COUNTY, a body politic and cor-
porate,

Plaintiff,

vs.

W. J. DONALD, as Receiver of The Nogales Na-
tional Bank, a national banking association,
Defendant.

SUIT TO ESTABLISH AND FORECLOSE
A LIEN.

COMPLAINT.

The plaintiff complains and alleges:

*Page numbering appearing at the foot of page of original certified
Transcript of Record.

I.

That plaintiff, Santa Cruz County, is a body politic and corporate within the State of Arizona. That The Nogales National Bank was at all times herein mentioned a national banking association duly created, organized and existing under the laws of the United States and having its place of business at the City of Nogales, Santa Cruz County, Arizona. That said banking association ceased doing business on December 1, 1931, and that said banking association was declared to be insolvent and a Receiver of said banking association was duly appointed by the Comptroller of Currency of the United States on December 16, 1931. That defendant, W. J. Donald, was duly appointed the Receiver of said banking association on February 11, 1932, to take effect at the close of business on February 13, 1932, by F. G. Awalt, acting Comptroller of the Currency [4] of the United States. That thereupon said W. J. Donald took possession of all of the property and assets of said insolvent banking association and since February 13, 1932, has been, and now is the duly appointed, qualified and acting Receiver of said banking association and all of its property and assets.

II.

That said The Nogales National Bank was, prior to June 28, 1928, appointed and designated by the County Treasurer of Santa Cruz County, Arizona, with the consent of the Board of Supervisors of

said County, to be a depository of monies of said County, and that on June 28, 1928, and on April 10, 1931, there was on deposit with said banking association as such depository the sum of Fifty Thousand (\$50,000.00) Dollars, monies of said Santa Cruz County deposited by the County Treasurer of said Santa Cruz County. That on June 28, 1928, said banking association delivered to The National City Bank of New York, a banking association or corporation doing business in the City and State of New York, the following described bonds, together with the coupons thereto attached, to-wit:

Twenty-one (21) City of Nogales Waterworks Improvement bonds issued by the City of Nogales, a municipal corporation in the State of Arizona, for the purpose of acquiring funds to improve the water distribution system of said City; said bonds being of the denomination of One Thousand (\$1,000.00) Dollars each, numbered serially from twenty-three (23) to forty-three (43), both inclusive, dated December 1, 1927, bearing interest at the rate of four and one-half ($4\frac{1}{2}\%$) per cent. per annum payable on June 1 and December 1 of each year; together with the consecutively numbered coupons for the payment of the interest upon said bonds and being attached to said bonds, in the sum of Twenty-two and 50/100 (\$22.50) Dollars each, coupon number fifteen (15), the lowest numbered coupon attached to each of said bonds, being payable

on June 1, 1935, and the highest numbered coupon attached to each of said bonds being payable on the same date as the bond to which the same is attached. [5]

Also, nine (9) City of Nogales Sewage Disposal Bonds issued by said City of Nogales for the purpose of acquiring funds to improve the sewage disposal system of said City, said bonds being of the denomination of One Thousand (\$1,000.00) Dollars each, numbered serially from twelve (12) to twenty (20), both inclusive, dated December 1, 1927, bearing interest at the rate of four and one-half ($4\frac{1}{2}\%$) per cent. per annum, payable on June 1 and December 1 of each year; together with the consecutively numbered coupons for the payment of the interest upon said bonds and being attached to said bonds, in the sum of Twenty-two and $50/100$ (\$22.50) Dollars each, coupon number fourteen (14), the lowest numbered coupon attached to each of said bonds, being payable on December 1, 1934, and the highest numbered coupon attached to each of said bonds being payable on the same date as the bond to which the same is attached.

That thereafter on April 10, 1931, said The Nogales National Bank delivered to said The National City Bank of New York the following described bonds with the coupons attached thereto, to-wit:

Two (2) certain bonds issued by Salt River Valley Water Users' Association, an Ari-

zona corporation, known as "Stewart Mountain Water Project 5½% Serial Gold Bonds", numbered M473 and M500, dated June 1, 1928, of the denomination of One Thousand (\$1,000.00) Dollars each, bearing interest at the rate of five and one-half (5½%) per cent. per annum, payable semi-annually on April 1 and October 1 of each year; together with seven (7) coupons in the sum of Twenty-seven and 50/100 (\$27.50) Dollars each attached to each of said bonds, numbered from fifteen (15) to twenty-one (21), both inclusive, coupon number fifteen (15) being payable on October 1, 1935, and coupon number twenty-one (21) being payable on October 1, 1938.

Also, three (3) certain bonds issued by said Salt River Valley Water Users' Association, numbered M1022, M1549 and M1550, dated February 1, 1923, of the denomination of One Thousand (\$1,000.00) Dollars each, bearing interest at the rate of six (6%) per cent. per annum, payable semi-annually on February 1 and August 1 of each year, together with the consecutively numbered coupons for the payment of the interest in the sum of Thirty (\$30.00) Dollars each, attached to each of said bonds, the lowest numbered coupon attached to each of said bonds being payable on August 1, 1935, and the highest numbered coupon attached to each of said bonds being payable on the same date as the bond to which the same is attached.

III.

That the bonds and coupons hereinabove described in paragraph II of this complaint were so delivered to said The [6] National City Bank of New York for plaintiff, and were pledged by said The Nogales National Bank as security for payment of the public monies and funds of plaintiff so on deposit with said The Nogales National Bank, the condition thereof being that said The Nogales National Bank will promptly pay said public monies to the County Treasurer of Santa Cruz County upon lawful demand therefor, and will, whenever thereunto required by law, pay to said County Treasurer such monies, with interest. That said bank was an inactive depository of said money, and that all of said money was on deposit with said bank for more than six (6) months.

IV.

That on February 26, 1932, the County Treasurer of Santa Cruz County, Arizona, made demand upon the Receiver of said banking association for the payment of said money on deposit and interest, and that the sum of Thirty-eight Thousand, Eight Hundred Forty-six and $85/100$ (\$38,846.85) Dollars of said deposit, together with interest to June 15, 1935, has been paid; but that the sum of Eleven Thousand, One Hundred Fifty-three and $15/100$ (\$11,153.15) Dollars of said deposit, with interest thereon from June 15, 1935, at the rate of six (6%) per cent. per annum remains unpaid. That all of said

bonds are in the possession of the County Treasurer of Santa Cruz County.

WHEREFORE, plaintiff prays judgment that it be adjudged and decreed that plaintiff has a lien upon all of said bonds and coupons as security for the unpaid amount of said deposit, to-wit, the sum of Eleven Thousand, One Hundred Fifty-three and 15/100 (\$11,153.15) Dollars, with interest thereon from June 15, 1935, at the rate of six (6%) per cent. per annum; that the said pledge of and the lien of plaintiff upon [7] said bonds and coupons, and all thereof, be foreclosed and that said bonds and coupons be sold according to law and the proceeds of sale apply to the payment of said sum of Eleven Thousand, One Hundred Fifty-three and 15/100 (\$11,153.15) Dollars, with interest as aforesaid, and the costs and expenses of this suit and such sale; that plaintiff have judgment for its costs and such further relief as plaintiff may be justly entitled.

JAMES V. ROBINS

County Attorney of Santa Cruz
County, Arizona,
Trust Building, Nogales, Ariz.
Attorney for Plaintiff.

State of Arizona,
County of Santa Cruz—ss.

JAMES V. ROBINS, being first duly sworn, upon his oath deposes and says:

That he is the attorney for plaintiff in the above entitled action, and that he makes this affidavit for

and on behalf of plaintiff; that he has read the foregoing complaint and knows the contents thereof, and that the matters and things therein stated are true in substance and in fact.

JAMES V. ROBINS

Subscribed and sworn to before me on this 31st day of December, 1935.

My commission expires September 28, 1938.

[Seal]

GRAYCE R. HILER

Notary Public.

[Transcript of record on removal endorsed]:
Filed Feb. 3, 1936. [8]

[Title of Court and Cause.]

PETITION OF DEFENDANT, W. J. DONALD,
AS RECEIVER OF THE NOGALES NATIONAL BANK, A NATIONAL BANKING ASSOCIATION, FOR REMOVAL TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ARIZONA.

To the Honorable, the Superior Court for the State of Arizona, in and for the County of Santa Cruz.

I.

Your petitioner respectfully represents to the Court that he is the duly appointed and acting receiver of the Nogales National Bank of Nogales,

Arizona, an insolvent national banking association; that the Nogales National Bank of Nogales, Arizona, is a national banking association duly organized and existing under the National Banking laws of the United States of America, having its principal place of business in the City of Nogales, County of Santa Cruz, State of Arizona, and has at all times hereinafter mentioned been doing a general banking business in the said city of Nogales until on or about the 30th day of November, 1931, when said bank voluntarily suspended business, and that on or about the 11th day of December, 1931, the Honorable Comptroller of Currency of the United States appointed a receiver therefor, and that your petitioner, W. J. Donald, is now the duly appointed, qualified, and acting receiver of the said Nogales National Bank; *that was*, at the time of the commencement of said suit, and still is, a resident of the State of Arizona; that the amount and matter in [9] dispute in the above entitled cause exceed, exclusive of interest and costs, the sum or value of three thousand (\$3000.00) dollars and that the suit is of a civil nature.

Your petitioner further shows unto this court that the said above entitled suit is one of a civil nature arising under the Constitution and the laws of the United States of America, to wit: Judicial Code, section 24, subdivision 16, which is as follows:

“The District Courts shall have jurisdiction as follows: of all cases * * * against any national bank-

ing association, and cases for winding up the affairs of any such bank * * *’.

Your petitioner further shows that the controversy herein arises from the following facts: the County Treasurer of Santa Cruz County, Arizona, is in possession, under a purported pledge agreement to guarantee deposit of county funds, of bonds owned by the Nogales National Bank, aforesaid, to the par value of, to wit: Twenty five thousand dollars (\$25,000.00) and demands that judgment be given Santa Cruz County against the said W. J. Donald, as receiver of the said Nogales Bank, in the sum of eleven thousand one hundred fifty-three and 15/100 dollars (\$11,153.15) with interest thereon from June 15, 1935, and that it be adjudged and decreed that plaintiff has a lien upon all of said bonds and coupons as security for that sum, and that the said bonds be sold and the proceeds applied to the payment of the said sum so claimed.

Your petitioner further represents unto this Court that the case as presented by the complaint herein is one for winding up the affairs of a national banking association within the meaning of the statute above quoted.

Your petitioner offers herewith, good and sufficient surety for its entering in the District Court of the United States for the District of Arizona, within thirty days from the time of filing this petition, a certified copy of the record in this suit, and for paying all costs that may be awarded by said District Court if said court shall hold that this suit

[10] was wrongfully or improperly removed thereto.

Your petitioner therefore prays that this court proceed no further herein, except to make the order of removal to said District Court of the United States as required by law, and to accept said surety and bond, and to *ca* cause the record herein to be removed to said District Court of the United States in and for the District of Arizona.

W. J. DONALD

Receiver of the Nogales National
Bank, of Nogales, Arizona.

State of Arizona,
County of Santa Cruz—ss.

W. J. Donald, being duly sworn on oath, says that he has read the above and foregoing petition and knows the contents thereof, and that the same is *trueof* his own knowledge, in substance and fact.

W. J. DONALD

Subscribed and sworn to before me, a notary public in and for Santa Cruz County, by W. J. Donald, January 16, 1936.

STEPHEN D. MONAHAN

Notary Public

My commission expires October 2, 1939.

[Transcript of Record on Removal Endorsed]:
Filed Feb. 3, 1935. [11]

Know all men by these presents, that we, W. J. Donald, as principal, and Fidelity and Deposit Company of Maryland as surety, are held and firmly bound unto the County of Santa Cruz, State of Arizona, in the sum of Five Hundred Dollars (\$500.00) to be paid to the said Santa Cruz County: to which payment well and truly to be made and done, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Whereas, the above bounden W. J. Donald has petitioned the Superior Court of the State of Arizona, in and for Santa Cruz County, for a removal of a cause therein pending, wherein Santa Cruz County is plaintiff and W. J. Donald, as Receiver of The Nogales National Bank, an insolvent national banking association is defendant, to the District Court of the United States for the District of Arizona, pursuant to the provisions of the act of Congress in that behalf;

Now, therefore, the condition of the above obligation is such that if the above bounden W. J. Donald, Receiver, shall enter in such District Court within thirty days from the time of filing said petition, a certified copy of the record in such suit, copies of the process against petitioner, and all of the pleadings, depositions, testimony and other proceedings in the cause, and shall pay all costs that may be awarded by said District Court, if said court shall hold that such suit was wrongfully or improperly removed thereto, and shall also then and

there appear, then this obligation shall be null and void, otherwise of force.

W. J. DONALD

[Transcript of Record on Removal Endorsed]:
Filed Feb. 3, 1935. [12]

[Title of Court and Cause.]

ORDER.

Upon reading and filing the petition of W. J. Donald, receiver, for removal of above entitled action to the District Court of the United States for the District of Arizona, and the bond thereto attached, showing that all the proceedings for the removal of said above entitled action into the District Court of the United States for the District of Arizona, pursuant to the statute in such case made and provided, have been taken, and that said suit is one proper for such removal, and on motion of Stephen D. Monahan, Attorney for the petitioner,

It is hereby ordered, that said petition and bond be and they are hereby accepted, that said Superior Court of the State of Arizona in and for the County of Santa Cruz proceed no further in said suit, that said suit be, and the same is hereby removed into the District Court of the United States for the District of Arizona, and the clerk of this court is hereby directed to transmit and deliver to the clerk of the District Court of the United States for the

District of Arizona, at Tucson, Arizona, copies of the record and of the process against said petitioner, and of all pleadings, depositions, testimony, and other proceedings in the cause.

Dated this 24th day of January, 1936. Done in open Court.

E. R. THURMAN

Judge of said Superior Court.

[Transcript of Record on Removal Endorsed]:
Filed Feb. 3, 1935. [13]

In the District Court of the United States in and
for the District of Arizona.

E-234 Tucson.

SANTA CRUZ COUNTY, a body politic and cor-
porate,

Plaintiff.

vs.

W. J. DONALD, as Receiver of the Nogales Na-
tional Bank, a national banking association,

Defendant.

NOTICE.

To James V. *Robbins*, Attorney for Plaintiff:

You are hereby notified that on January 24th, 1936, by an order of the Superior Court of the State of Arizona, in and for Santa Cruz County, the above entitled cause was duly removed from

said Court to the District Court of the United States, for the District of Arizona and a transcript of the record of said cause was filed in the office of the Clerk of said District Court at Tucson, Arizona, on the 3rd day of February, 1936.

STEPHEN D. MONAHAN

Attorney for Defendant

Received a copy of the above notice this 6th day of February, 1936.

JAMES V. ROBINS

Atty. for Plaintiff G. R. H.

[Endorsed]: Filed Feb. 12, 1936. [14]

[Title of Court and Cause.]

ANSWER AND COUNTERCLAIM.

The defendant, W. J. Donald, as receiver of the Nogales National Bank of Nogales, Arizona, an insolvent National Banking Association, for answer to plaintiff's complaint, filed herein, admits, denies and alleges as follows:

I.

Admits the allegations in paragraph I of said complaint.

II.

Alleges that he is not informed as to any appointment or designation of the Nogales National Bank as a depository of county funds, or the deposit of county funds therein except and unless as follows:

That heretofore, on to-wit: January 3, 1925, the said Anna B. Ackley, as treasurer aforesaid, deposited in the Nogales National Bank the sum of Thirty Thousand Seven Hundred Two and 67/100 (\$30,702.67) dollars and that various and sundry amounts were so deposited from time to time by her until on or about May 7, 1928, that the total of said sums so deposited was the sum of Fifty Thousand (\$50,000.00) dollars; that on January 2, 1929, the said sum was transferred on the books of said bank to the account of A. Dunbauld, as treasurer of Santa Cruz County; that since June 1st, 1928, no deposits of money or credits of any kind have been made in the said account; that the said account stood in the name of A. Dunbauld, as treasurer aforesaid, at the time [15] of the closing of the said bank and appointment of a receiver therefore; that since, to-wit: January 2, 1933, the account has stood on the books of the said bank and now so stands in the name of Anna B. Ackley, as treasurer of Santa Cruz County, aforesaid. Defendant admits the other allegations in paragraph II of said complaint.

III.

Admits that the bonds described in paragraph II of said complaint were delivered to the National City Bank of New York, and admits that the funds described in paragraph II of this answer were on deposit with the said Nogales National Bank more than six months. Defendant denies all other allegations in paragraph III of said complaint.

IV.

Answering the allegations of paragraph IV of said complaint, defendant alleges that he is informed and believes that the said bonds are in the possession of Anna B. Ackley, Treasurer of Santa Cruz County. Defendant denies all other allegations in paragraph IV of said complaint.

V.

As and For a Separate Defense and by Way of Counterclaim This Defendant Alleges:

That this answer is filed by direction of the Honorable Comptroller of the United States Currency, that the amount involved exclusive of interest and costs exceeds the sum of Three Thousand (\$3,000.00) dollars; that the action is one for winding up the affairs of a national banking association; that the action is one brought under the laws of the United States and involves the construction of a United States statute:

VI.

That Anna B. Ackley, was during the years 1925, 1926, 1927 and 1928, the duly elected, qualified and acting Treasurer of Santa Cruz County, a duly organized and constituted political subdivision of the State of Arizona; that during the years 1929, 1930, 1931 and 1932, A. Dumbauld was the duly elected, qualified and acting Treasurer of the *saforesaid* county, and that during the years 1933, 1934, 1935 was and now is [16] the duly elected, qualified and acting treasurer of said County; that

Anna B. Ackley is a resident of the County of Santa Cruz and State of Arizona; that A. Dumbauld is a resident of the County of Maricopa and State of Arizona.

VII.

That heretofore, on to-wit: January 3, 1925, the said Anna B. Ackley, as treasurer aforesaid, deposited in the Nogales National Bank the sum of Thirty Thousand Seven Hundred Two and 67/100 (\$30,702.67) dollars and that various and sundry amounts were so deposited from time to time by her until on or about May 7, 1928, that the total of said sums so deposited was the sum of Fifty Thousand (\$50,000.00) dollars; that on January 2, 1929, the said sum was transferred on the books of said bank to the account of A. Dumbauld, as treasurer of Santa Cruz County; that since June 1st, 1928, no deposits of money or credits of any kind have been made in the said account; that the said account stood in the name of A. Dumbauld, as treasurer aforesaid, at the time of the closing of the said bank and the appointment of a receiver therefore; that since, to-wit: January 2, 1933, the account has stood on the books of the said bank and now so stands in the name of Anna B. Ackley, as treasurer of Santa Cruz County, aforesaid.

VIII.

That on March 14, 1928, the said Nogales National Bank delivered to the National City Bank of New York City, a national banking association or cor-

poration, fifteen certain bonds of Pima County School District No. 1, to the par value of Fifteen Thousand (\$15,000.00) dollars, and five certain bonds of the Salt River Valley Water Users Association, to the par value of Five Thousand (\$5,000.00) dollars and from the said National City Bank of New York City, received an escrow receipt which is in words and figures as follows: [17]

“ESCROW RECEIPT.

We hereby acknowledge receipt from the Nogales National Bank of Nogales, Arizona, of the following securities:

\$15,000. County of Pima School District No. 1 School Bldg. Bond 5% due March 1, 1939 with September 1928 and subsequent coupons attached, Nos. 17/31, interest payable March and September 1.

5,000. Salt River Valley Water Users Association, Arizona. 6% Funding Serial Gold Bonds 6% due July 1, 1931 with July 1928 and subsequent coupons attached, Nos. 904/8, interest payable January and July 1.

to be held in escrow upon the following terms and conditions:

1. To surrender all or any part of said securities at any time to said Nogales National Bank, at its request, upon receipt of a statement in writ-

ing signed by the then Treasurer of Santa Cruz County, Arizona, acknowledging that said County of Santa Cruz, Arizona, has no interest in the securities so surrendered.

2. To collect the interest coupons maturing on said securities so long as same remain in our possession hereunder, and to pay over the proceeds thereof to said Nogales National Bank.

3. To deliver any and all of such securities remaining in our possession hereunder at any time after the 14th day of March, 1928, to the then Treasurer of the County of Santa Cruz, Arizona, upon his written demand therefor, to be held by said Treasurer for the benefit of said County of Santa Cruz, Arizona, and of said Nogales National Bank as their respective interests may appear, but without any responsibility on our part from any disposition thereof which may be made by him.

4. We may at any time act in reliance upon the signature of any person purporting to act as Treasurer of the County of Santa Cruz, Arizona, without liability of any kind therefor, either to said County of Santa Cruz, Arizona, or to said Nogales National Bank, or to any other claimant, but we shall not be required to do so, and may in our discretion at any time require such evidence of the signature and authority of such Treasurer as may be satisfactory to our attorneys.

5. We are not to be required to keep any of said securities insured against any risks whatever, nor are we to be responsible for the safekeeping of

said securities except to give to them the same care as we do our own property.

6. The Nogales National Bank is to pay any and all expenses which we may incur, and to indemnify and save us harmless against any and all loss and damages which we may suffer or sustain hereunder or in connection herewith.

7. We may act in reliance upon advice of counsel in reference to any matters in connection with this escrow, and shall not be liable for any mistake of fact or error of judgment, or for any acts of omissions of any kind, unless caused by our own misconduct.

Executed in duplicate, this 14th day of March, 1928.

THE NATIONAL CITY BANK
OF NEW YORK

By E. C. BOGERT

A. Cashier. [18]

IX.

That on June 28, 1928, the said Nogales National Bank delivered to the said National City Bank of New York City, twenty one certain City of Nogales Water Works improvement bonds to the par value of Twenty One Thousand (\$21,000.00) dollars and nine certain City of Nogales Sewage Disposal Bonds to the par value of Nine Thousand (\$9,000.00) dollars and received from the said Na-

tional City Bank its escrow receipt which is in words and figures as follows:

“ESCROW RECEIPT.

We hereby acknowledge receipt from Nogales National Bank, Nogales, Arizona, of the following securities:

\$21,000. City of Nogales, Water Works Improvement Bond 4½% Due December 1, 1953 with December 1, 1928 and subsequent coupons attached Nos. 23/43 for \$1,000 each

\$9,000. City of Nogales, Sewage Disposal Bond 4½% Due December 1, 1951 with December 1 1928 and subsequent coupons attached Nos. 12/20 for \$1,000 each.

to be held in escrow upon the following terms and conditions.

1. To surrender all or any part of said securities at any time to said Nogales National Bank, Nogales, Arizona, at its requests, upon receipt of a statement in writing signed by the then Treasurer of Santa Cruz County, Arizona, acknowledging that said Santa Cruz County, Arizona, has no interest in the securities so surrendered.

2. To collect the interest coupons maturing on said securities so long as same remain in our possession hereunder, and to pay over the proceeds thereof to said Nogales National Bank, Nogales, Arizona.

3. To deliver any and all of such securities remaining in our possession hereunder at any time

after the 29th of June, 1928, to the then Treasurer of Santa Cruz County, Arizona, upon his written demand therefor, to be held by said Treasurer for the benefit of said Santa Cruz County, Arizona, and of said Nogales National Bank, as their respective interests may appear, but without any responsibility on our part for any disposition thereof which may be made by him.

4. We may at any time act in reliance upon the signature of any person purporting to act as Treasurer of Santa Cruz County, Arizona, without liability of any kind therefor, either to said Santa Cruz County, Arizona or to said Nogales National Bank, or to any other claimant, but we shall not be required to do so, and may in our discretion at any time require such evidence of the signature and authority of such Treasurer as may be satisfactory to our attorneys.

5. We are not to be required to keep any of said securities insured against any risks whatever, nor are we to be responsible for the safekeeping of said securities except to give to them the same care as we do our own property.

6. Nogales National Bank, Nogales, Arizona, is to pay any and all expenses which we may incur, and to indemnify and save us harmless against any and all loss and damages which we may suffer or sustain hereunder or in connection herewith.

[19]

7. We may act in reliance upon advice of counsel in reference to any matters in connection with

this escrow, and shall not be liable for any mistake of fact or error of judgment, or for any acts or omissions of any kind, unless caused by our own wilful misconduct.

Executed in duplicate, this 28th day of June, 1928.

THE NATIONAL CITY BANK
OF NEW YORK

By H. D. HALL
A. Cashier

X.

That subsequent thereto, at a time the exact date of which this defendant is not informed, the then County Treasurer of said County, received from the National City Bank of New York City, all of the bonds so held by it and heretofore described. That thereafter, during the month of February, 1931, the then County Treasurer, A. Dumbauld, surrendered to the Nogales National Bank, five Salt River Valley Water Users Association bonds to the par value of Five Thousand (\$5,000.00) dollars and more fully described in the aforesaid escrow receipt of March 14, 1928, and that no other bonds nor the proceeds of any other of said bonds heretofore described have been received by the Nogales National Bank aforesaid or any receiver thereof.

XI.

Upon information and belief that on December 27th, 1932, A. Dumbauld, the then County Treas-

urer aforesaid, sold fifteen certain Pima County school bonds of the par value of Fifteen Thousand (\$15,000.00) dollars and more fully described in the said escrow receipt of March 14, 1928, for the sum of Fourteen Thousand Two Hundred Fifty Seven and 16/100 (\$14,257.16) dollars, which said bonds were the property of the said Nogales National Bank and that the proceeds of said bonds were retained by the then acting County Treasurer A. Dumbauld and now are in the possession of the present acting treasurer, Anna B. Ackley that the balance of said bonds, heretofore described are in the possession of the said Anna B. Ackley.

XII.

That on to-wit: January 21, 1936, the defendant, as receiver aforesaid, made demand for the return of said bonds or the proceeds thereof, [20] on Anna B. Ackley and on A. Dumbauld each, by depositing in the United States Post Office, registry division, an envelope bearing the required United States postage, addressed to A. Dumbauld at his address in Phoenix, Arizona, and a similar envelope addressed to Anna B. Ackley at Nogales, Arizona, and each envelope containing the following demand:

“TO

Anna B. Ackley,
Treasurer of Santa Cruz County,
State of Arizona
and

A. Dumbauld,
Ex treasurer of Santa Cruz County,
State of Arizona

I hereby demand that you deliver up and return to me as the duly appointed, qualified and acting receiver of the Nogales National Bank, an insolvent national banking association, the following described bonds held by you in violation of the National Banking laws of the United States of America:

Twenty One Thousand (\$21,000.00) dollars City of Nogales, water works improvement bonds, 4½% due December 1, 1953 with December 1, 1928 and subsequent coupons attached, Nos. 23/43 for One Thousand (\$1,000.00) dollars each, or the proceeds thereof if disposed of and any interest collected by you, or either of you.

Nine Thousand (\$9,000.00) dollars City of Nogales sewage disposal bonds 4½% due December 1, 1951, with December 1, 1928 and subsequent coupons attached Nos. 12/20 for One Thousand (\$1,000.00) dollars each, or the proceeds thereof if disposed of and any interest collected by you, or either of you.

Fifteen Thousand (\$15,000.00) dollars County of Pima School District No. 1 School Bldg. bonds

5% due March 1, 1939 with September 1928 and subsequent coupons attached, Nos. 17/31 interest payable March and September, One Thousand (\$1,000.00) dollars each, or the proceeds thereof if disposed of and any interest collected by you, or either of you.

The above described bonds were and are the property of the Nogales National Bank, of Nogales, Arizona, now insolvent.

Dated January 16th, 1936.

W. J. DONALD

Receiver of the Nogales National Bank, of Nogales, Arizona, an insolvent national banking association." [21]

XIII.

That the said A. Dumbauld and Anna B. Ackley and each of them have failed and refused to deliver to this defendant any of the said bonds or the proceeds.

That the said bonds or the proceeds thereof, if sold or otherwise disposed of, are the property of the Nogales National Bank, aforesaid, that the said A. Dumbauld, Anna B. Ackley and the County of Santa Cruz, nor either or any of them, have any right, title or interest in or to the said bonds nor to the proceeds thereof: that the delivery of said bonds by the Nogales National Bank to the said National City Bank of New York City as a pledge or otherwise, was illegal and ultra vires.

XIV.

Defendant alleges that there are persons, to-wit: A. Dumbauld and Anna B. Ackley, who are not parties to this action and who have an interest in the controversy and who are necessary parties to a complete determination of the controversy involved in this action. That the said A. Dumbauld and Anna B. Ackley or either of them have received or hold said bonds or the proceeds thereof and that any decree of this court directing the return of said bonds or the proceeds thereof to this defendant must be to either or both said A. Dumbauld and Anna B. Ackley; that without their presence in this action there is no party over whom the court would have jurisdiction to compel the delivery of said bonds or the proceeds thereof to this defendant.

Wherefore defendant prays that the said A. Dumbauld and the said Anna B. Ackley, as treasurer of Santa Cruz County, be made additional parties to this action, and that process be directed to issue to them in pursuance to the rules of this court and the statutes in such case made and provided.

And that the said Anna B. Ackley be enjoined and restrained from selling or otherwise disposing of said bonds or the proceeds thereof if already sold, pending the final determination of this action.

And that the defendant have the judgment of this Honorable Court that a decree be entered directing and commanding the said A. Dumbauld and Anna B. Ackley and each or either of them to deliver to this [22] defendant, as receiver of the

Nogales National Bank, all of the said bonds above described, and in the event that any of said bonds have been sold, to deliver up to this defendant the proceeds thereof, together with an accounting for the same, and for such other and further relief in the premises as to this court shall seem meet and proper.

STEPHEN D. MONAHAN

Attorney for Defendant

W. J. Donald, Receiver

State of Arizona,
County of Santa Cruz—ss.

W. J. DONALD, being first duly sworn, deposes and says that he, as receiver of the Nogales National Bank, an insolvent national banking association, is the defendant in the above entitled cause; that he has read the complaint of Santa Cruz County, plaintiff, filed herein and knows the contents thereof. That he has read the above and foregoing answer and knows the contents thereof; that the matters and things therein denied are untrue in fact and substance of his own knowledge except as to the matters therein denied on information and belief, and as to them he believes them to be untrue in fact and substance; that the matters and things therein alleged are true in substance and fact to his own knowledge, except such matters therein stated to be alleged on information and belief, and that as to those matters he believes them to be true.

W. J. DONALD

Subscribed and sworn to before me this 5th day
of February, 1936.

[Seal]

STEPHEN D. MONAHAN

Notary Public.

My Commission expires October 2, 1939. [23]

[Endorsed]: Filed Feb. 12, 1936. [24]

[Title of Court.]

November 1935 Term

At Tucson

Minute Entry of

Thursday, February 27, 1923

(Tucson Equity Minutes.)

HONORABLE ALBERT M. SAMES, Judge
United States District Court, Presiding.

[Title of Cause.]

On motion of Stephen D. Monahan, Esquire,
counsel for the defendant, and upon reading said
defendant's answer and counterclaim heretofore
filed herein,

IT IS ORDERED that Anna B. Ackley, as
Treasurer of Santa Cruz County, Arizona, and A.
Dumbauld, be made additional parties defendant
herein.

Whereupon, the following Order is entered. [25]

[Title of Court and Cause.]

ORDER.

It is hereby ordered that Anna B. Ackley, as treasurer of Santa Cruz County, Arizona, and A. Dumbauld be made additional parties. defendant to this action, and that the subpoena of this court issue directed to each of them summoning and directing them and each of them to appear and answer the counterclaim, filed herein, within twenty (20) days from the date of said service upon them.

Done in open court this 27th day of February, 1936.

ALBERT M. SAMES

Judge of District Court.

[Endorsed]: Filed Feb. 27, 1936. [26]

[Title of Court and Cause.]

ANSWER OF DEFENDANT, ANNA B. ACKLEY, AS COUNTY TREASURER OF SANTA CRUZ COUNTY, ARIZONA.

Comes now the defendant, Anna B. Ackley, as County Treasurer of Santa Cruz County, Arizona, by her solicitor, James V. Robins, and in answer to the matters and things stated in plaintiff's complaint in this action, said defendant admits all of the allegations in said complaint contained.

WHEREFORE, said defendant prays that she have judgment for her costs against the defendant,

W. J. Donald, as Receiver of The Nogales National Bank, a national banking association.

JAMES V. ROBINS

Trust Building, Nogales, Arizona,
Solicitor for Defendant,

Anna B. Ackley, as County Treasurer
of Santa Cruz County, Arizona.

[Endorsed]: Filed Mar. 27, 1936. [27]

[Title of Court and Cause.]

ANSWER OF DEFENDANT, A. DUMBAULD.

Comes now the defendant, A. Dumbauld, by his solicitor, James V. Robins, and in answer to the matters and things stated in plaintiff's complaint in this action, said defendant admits all of the allegations in said complaint contained.

WHEREFORE, said defendant prays that he have judgment for his costs against the defendant, W. J. Donald, as Receiver of The Nogales National Bank, a national banking association.

JAMES V. ROBINS

Trust Building, Nogales, Arizona,
Solicitor for Defendant.

A. Dumbauld.

[Endorsed]: Filed Mar. 27, 1936. [28]

[Title of Court and Cause]

ANSWER OF SANTA CRUZ COUNTY TO
SEPARATE DEFENSE AND COUNTER-
CLAIM OR W. J. DONALD, AS RECEIVER
OF THE NOGALES NATIONAL BANK, A
NATIONAL BANKING ASSOCIATION.

Comes now the plaintiff, Santa Cruz County, a body politic and corporate, and in answer to the separate defense and counterclaim of the defendant, W. J. Donald, as Receiver of The Nogales National Bank, a national Banking association, plaintiff admits, denies and alleges as follows, to-wit:

I.

Admits the allegations of paragraphs VI and VII of said separate defense and counterclaim. Admits the allegations of paragraphs VIII, IX and X of said separate defense and counterclaim, but alleges that the bonds described in said paragraphs were so delivered to said The National City Bank of New York for plaintiff, and were pledged by said The Nogales National Bank as security for payment of public monies and funds of plaintiff so on deposit with said The Nogales National Bank, the condition thereof being that said The Nogales National Bank will promptly [29] pay said public monies to the County Treasurer of Santa Cruz County, upon lawful demand therefor, and will whenever thereunto required by law pay to said County Treasurer such monies with interest. That

said bank was an inactive depository of said money, and that all of said money was on deposit with said bank for more than six (6) months. Plaintiff further alleges that on February 26, 1932, the County Treasurer of said Santa Cruz County made demand upon the defendant receiver of said banking association for the payment of said money on deposit and interest, and that the sum of Thirty-eight Thousand Eight Hundred Forty-six and 85/100 (\$38,846.85) Dollars of said deposit, together with interest to June 15, 1935, has been paid; but that the sum of Eleven Thousand One Hundred Fifty-three and 15/100 (\$11,153.15) Dollars of said deposit, with interest thereon from June 15, 1935, at the rate of six (6%) per cent. per annum remains unpaid. That said bonds are in the possession of said County Treasurer of Santa Cruz County, subject to the terms and conditions of said pledge.

II.

Answering paragraph XI of said separate defense and counterclaim, plaintiff admits that the County Treasurer of said Santa Cruz County sold the bonds described in said paragraph for the sum of Fourteen Thousand Two Hundred Fifty-seven and 16/100 (\$14,257.16) Dollars as alleged in said paragraph; admits that said bonds were the property of said The Nogales National Bank, subject, however, to the terms and conditions of said pledge. Admits that the proceeds of said bonds were retained by the then County Treasurer, but denies that such

proceeds are in the possession of the present County Treasurer of said County; admits that the balance of said bonds described in said separate defense and counterclaim are in the possession of said Anna B. Ackley, the County Treasurer [30] of said County, subject, however, to the terms and conditions of said pledge.

III.

Admits the allegations of paragraph XII of said separate defense and counterclaim.

IV.

Admits that said A. Dumbauld and Anna B. Ackley, and each of them, have failed and refused to deliver to said defendant any of said bonds, or the proceeds thereof, but alleges that no demand therefor was ever made by said defendant, except as alleged in paragraph XII of said separate defense and counterclaim.

V.

Denies the allegations of paragraph XIV of said separate defense and counterclaim, but alleges that said bonds are in the possession of said Anna B. Ackley, as County Treasurer of plaintiff, and that said Anna B. Ackley, as County Treasurer, is holding said bonds subject to the terms and conditions of said pledge, as set forth and described in plaintiff's complaint in this action.

WHEREFORE, plaintiff prays that defendant take nothing by its separate defense and counter-

claim, and that plaintiff have judgment against said defendant for its costs.

JAMES V. ROBINS

Trust Building,

Nogales, Arizona,

Solicitor for Plaintiff.

State of Arizona,

County of Santa Cruz—ss.

JAMES V. ROBINS, being first duly sworn, upon his oath deposes and says:

That he is the solicitor for the plaintiff in the above entitled action, and that he makes this affidavit for and on behalf of the plaintiff, for the reason that he is better informed than the plaintiff of the matters and things stated in the foregoing answer. That he has read the foregoing [31] answer and knows the contents thereof; that the matters and things therein alleged are true, and that the matters and things stated in the separate defense and counterclaim of the defendant, W. J. Donald, as Receiver of The Nogales National Bank, a national banking association, and which are denied in the foregoing answer are untrue.

JAMES V. ROBINS

Subscribed and sworn to before me on this 23rd day of March, 1936.

My commission expires: September 28, 1938.

[Seal]

GRAYCE R. HILER

Notary Public

[Endorsed]: Filed Mar. 27, 1936. [32]

[Title of Court and Cause.]

ANSWER OF DEFENDANT, ANNA B. ACKLEY, AS COUNTY TREASURER OF SANTA CRUZ COUNTY, ARIZONA, TO SEPARATE DEFENSE AND COUNTERCLAIM OF DEFENDANT, W. J. DONALD, AS RECEIVER OF THE NOGALES NATIONAL BANK, A NATIONAL BANKING ASSOCIATION.

Comes now the defendant, Anna B. Ackley, as County Treasurer of Santa Cruz County, Arizona, and in answer to the separate defense and counterclaim of defendant, W. J. Donald, as Receiver of The Nogales National Bank, a national banking association, said defendant admits, denies and alleges as follows, to-wit:

I.

Admits the allegations of paragraphs VI and VII of said separate defense and counterclaim.

II.

Admits the allegations of paragraphs VIII, IX and X of said separate defense and counterclaim, but alleges that the bonds described in said paragraphs were delivered to said The National City Bank of New York for plaintiff, and were pledged by said The Nogales National Bank as security for payment of the public monies and funds of plaintiff so on deposit with said The [33] Nogales National Bank, the condition of said pledge being that said The Nogales National Bank will promptly

pay said public monies to the County Treasurer of Santa Cruz County upon lawful demand therefor, and will, whenever thereunto required by law, pay to said County Treasurer such monies with interest. That said bank was an inactive depository of said money, and that all of said money was on deposit with said bank for more than six (6) months.

III.

Answering the allegations of paragraph XI of said separate defense and counterclaim, this defendant admits that the County Treasurer of said County sold the bonds described in said paragraph XI for the sum stated in said paragraph XI; admits that said bonds were the property of said The Nogales National Bank, subject, however, to the terms and conditions in said pledge; admits that the proceeds of said bonds were retained by one A. Dumbauld, as County Treasurer of said County, but denies that such proceeds are in the possession of this defendant. Admits that the balance of the bonds described in said separate defense and counterclaim are in the possession of this defendant, as such County Treasurer.

IV.

Admits the allegations of paragraph XII of said separate defense and counterclaim.

V.

Admits that said A. Dumbauld and this defendant have failed and refused to deliver to said de-

defendant, W. J. Donald, as Receiver of The Nogales National Bank, a national banking association, any of said bonds, or the proceeds thereof, but alleges that [34] no demand therefor was ever made by said defendant receiver, except as alleged in paragraph XII of said separate defense and counterclaim.

V.

Denies the allegations of paragraph XIV of said separate defense and counterclaim, but alleges that said bonds are in the possession of this defendant as such County Treasurer of plaintiff, and that this defendant as such County Treasurer is holding said bonds subject to the terms and conditions of said pledge, as set forth and described in plaintiff's complaint in this action.

WHEREFORE, this defendant prays that defendant receiver take nothing by its separate defense and counterclaim, and that this defendant have judgment against said defendant receiver for her costs.

JAMES V. ROBINS

Trust Building, Nogales, Arizona,

Solicitor for Defendant,

Anna B. Ackley, as County Treasurer
of Santa Cruz County.

State of Arizona,

County of Santa Cruz—ss.

JAMES V. ROBINS, being first duly sworn, upon his oath deposes and says:

That he is the solicitor for the defendant, Anna B. Ackley, as County Treasurer of Santa Cruz

County, Arizona, and that he makes this affidavit for and on behalf of said defendant, for the reason that he is better informed than said defendant of the matters and things stated in the foregoing answer. That he has read the foregoing answer and knows the contents thereof; that the matters and things therein alleged are true, and that the matters and things stated in the separate defense and counterclaim of the defendant, W. J. Donald, as Receiver of The Nogales National Bank, a national Banking association, and which are denied in the foregoing answer are untrue.

JAMES V. ROBINS

Subscribed and sworn to before me on this 23rd day of March, 1936.

[Seal]

GRAYCE H. HILER

Notary Public

My commission expires: September 28, 1938.

[Endorsed]: Filed Mar. 27, 1936. [35]

[Title of Court.]

November 1935 Term

At Tucson

(Minute Entry of Monday, April 13, 1936)

(Tucson Equity Minutes)

Honorable ALBERT M. SAMES, Judge, United States District Court, Presiding.

[Title of Cause.]

HEARING ON MOTIONS

Motion of the Defendant, A. Dumbauld, to Dismiss Separate Defense and Counterclaim of De-

fendant, W. J. Donald, as Receiver of The Nogales National Bank, and Motion of the Defendant, W. J. Donald, as Receiver of The Nogales National Bank, to Strike Answers of the Defendants A. Dumbauld and Anna B. Ackley, as Treasurer of Santa Cruz County, Arizona, come on regularly for hearing this day.

James V. Robins, Esquire, appears as counsel for the plaintiff and for the defendants A. Dumbauld and Anna B. Ackley, as Treasurer of Santa Cruz County, Arizona. Stephen D. Monahan, Esquire, appears as counsel for the defendant W. J. Donald, as Receiver of The Nogales National Bank.

Argument is now had by respective counsel, and
IT IS ORDERED that said Motion to Dismiss Separate Defense and Counterclaim and said Motion to Strike Answers be submitted and by the Court taken under advisement. [36]

[Title of Court.]

May 1936 Term

At Tucson

Minute Entry of Tuesday, May 12, 1936.

(Tucson Equity Minutes)

Honorable ALBERT M. SAMES, Judge United States District Court, Presiding.

[Title of Cause.]

ORDER DENYING MOTIONS.

Motion of the Defendant, A. Dumbauld, to Dismiss Separate Defense and Counterclaim of De-

will, whenever thereunto required by law, pay to said County Treasurer such monies with interest. That said bank was an inactive depository of said money, and that all of said money was on deposit with said bank for more than six (6) months.

III.

Answering the allegations of paragraph XI of said separate defense and counterclaim, this defendant admits that the County Treasurer of said County sold the bonds described in said paragraph XI for the sum stated in said paragraph XI; admits that said bonds were the property of said The Nogales National Bank, subject, however, to the terms and conditions in said pledge; admits that the proceeds of said bonds were retained by this defendant as County Treasurer of said County, but denies that such proceeds are in the possession of Anna B. Ackley. Admits that the balance of the bonds described in said separate defense and counterclaim are in the possession of Anna B. Ackley, as County Treasurer of said County.

IV.

Admits the allegations of paragraph XII of said separate defense and counterclaim.

V.

Admits that this defendant and said Anna B. Ackley as such County Treasurer have failed and refused to deliver to said defendant, W. J. Donald, as Receiver of The Nogales National Bank, a na-

tional banking association, any of said bonds, or the proceeds thereof, but alleges that no demand therefor was ever made by said defendant receiver, except as alleged in paragraph XII of said separate defense and counterclaim. [39]

VI.

Denies the allegations of paragraph XIV of said separate defense and counterclaim, but alleges that said bonds are in the possession of defendant, Anna B. Ackley, as County Treasurer of plaintiff, and that said County Treasurer is holding said bonds subject to the terms and conditions of said pledge as set forth and described in plaintiff's complaint in this action.

WHEREFORE, this defendant prays that defendant receiver take nothing by its separate defense and counterclaim, and that this defendant have judgment against said defendant receiver for his costs.

JAMES V. ROBINS,

Trust Building, Nogales, Arizona,
Solicitor for Defendant,
A. Dumbauld.

State of Arizona

County of Santa Cruz—ss.

JAMES V. ROBINS, being first duly sworn, upon his oath deposes and says:

That he is the solicitor for the defendant, A. Dumbauld, and that he makes this affidavit for and on behalf of said defendant, for the reason that

he is better informed than said defendant of the matters and things stated in the foregoing answer. That he has read the foregoing answer and knows the contents thereof; that the matters and things therein alleged are true and that the matters and things stated in the separate defense and counterclaim of the defendant, W. J. Donald, as Receiver of The Nogales National Bank, a national banking association, and which are denied in the foregoing answer are untrue.

JAMES V. ROBINS.

Subscribed and sworn to before me on this 25th day of May, 1936.

[Seal]

GRAYCE R. HILER

Notary Public. My commission
expires: September 28, 1938.

[Endorsed]: Filed May 26, 1936. [40]

[Title of Court.]

May 1936 Term

At Tucson

Minute Entry of Tuesday, May 26, 1936.

Honorable ALBERT M. SAMES, Judge United
States District Court, Presiding.

[Title of Cause.]

TRIAL SETTING.

Upon stipulation of the respective counsel, heretofore filed herein,

IT IS ORDERED that this case be and the same is hereby set for trial Tuesday, June 16, 1936, at the hour of ten o'clock A. M. [41]

[Title of Court.]

May 1936 Term

At Tucson

(Minute Entry of Tuesday, June 16, 1936.)

Tucson Equity Minutes)

Honorable ALBERT M. SAMES, Judge, United States District Court, Presiding.

[Title of Cause.]

PROCEEDINGS OF TRIAL.

This case comes on regularly for trial this day before the Court sitting without a Jury.

James D. Robins, Esquire, appears as counsel for the Plaintiff and for the Defendants, Anna B. Ackley, as Treasurer of Santa Cruz County, Arizona, and A. Dumbauld, Stephen D. Monahan, Esquire, appears as counsel for the Defendant, W. J. Donald, as Receiver of The Nogales National Bank, a national banking association.

Both sides announce ready for trial and now submit and file an agreed Statement of Facts herein.

Upon stipulation of the respective counsel.

IT IS ORDERED that said counsel be permitted to amend said Agreed Statement of Facts by interlineation.

Argument is now duly had by respective counsel, and

IT IS ORDERED that this case be submitted and by the Court taken under advisement. [42]

[Title of Court and Cause.]

MEMORANDUM DECISION.

The facts in this case are not in dispute. In 1928, The Nogales National Bank was designated as depository for public moneys of the county of Santa Cruz and sums amounting on June 1st, 1928, to \$50,000.00 were deposited in said bank subject at all times to check or draft, but which have not since been withdrawn, and no deposits or credits have since been made on said account. On March 14, 1928, pursuant to the provision of Sec. 2634, Revised Statutes of Arizona, the Nogales National Bank delivered to National City Bank of New York sixteen Pima County School District bonds and five Salt River Valley Water Users' Association Bonds, and on July 28, 1928, said Nogales Bank delivered to said New York bank certain bonds of the City of Nogales, to wit: twenty-one Water Works Improvement bonds and nine Sewage Disposal bonds, and on Delivery of said bonds said National City Bank of New York issued its receipt stating that said bonds are held in escrow to surrender the same to said Nogales National Bank upon receipt of a written statement of the Treasurer of said County that said county has no interest in said bonds, * * * to deliver said bonds to said County Treasurer on a written demand therefor to be held by said Treasurer of said County and said Nogales bank as their interest may appear. On April 10, 1931, said five Salt River Valley Water

Users' Association Bonds were returned by the New York bank to the Nogales bank, and on the same day seven other bonds issued by said Water Users' Association were delivered by [43] the Nogales bank to said New York bank and a receipt therefor was issued by the latter containing recitals for surrender or delivery as set forth in the receipts issued for said bonds delivered prior thereto. On December 1, 1931, the Nogales National Bank closed. On April 4, 1932, the National City Bank of New York delivered all of said bonds remaining in its possession to the Treasurer of said county. On December 25, 1932, said Treasurer sold the Pima County School District Bonds for \$14,257.16, and on October 1, 1933, surrendered two of said Water Users' Association Bonds, last delivered, to the New York bank, to said Water Users' Association on payment by said Association to the Treasurer of \$2,000.00. On January 21, 1936, the receiver of the Nogales National Bank made demand on the County Treasurer of said county for the return of said bonds or the proceeds thereof, which was refused. The present County Treasurer acknowledges that he has on hand said bonds or the proceeds thereof.

On June 25, 1930, the National Bank Act, Title 12, U. S. C. A. 90, was amended by the addition of the following:

“Any association may, upon the deposit with it of public money of a state, or any political subdivision thereof, give security, for the safe

keeping and prompt payment of the money so deposited, of the same kind as is authorized by the law of the state in which such association is located in the case of other banking institutions in the state.”

The statute of Arizona, 2634 R. S. A., 1928, authorizes banks to pledge their securities for deposits of public money and no question is raised as to the adequacy of such law for authority to secure such deposits as specified in Title 12, U. S. C. A., Sec. 90, or as to the character of the bonds pledged. The statute specifies that the condition on deposit of securities in lieu of bonds in Arizona banks shall be that such depository will promptly pay to the parties public moneys in its hands upon lawful demand therefor, and will, whenever thereunto required by law, pay to the Treasurer making the deposit, such moneys with interest thereon as provided by law. [44]

It appears from the agreed statement of facts that all of the bonds aforesaid were delivered by said Nogales National Bank to said National City Bank of New York as security for the payment of the deposits of said county in said bank. That the facts evidence a pledge, see R. S. A., 1928, Sec. 2634, *Fidelity & Deposit Co. of Maryland et al. v. Korkda*, 66 F. (2d) 641; *Kavanaugh v. Fash*, 74 F. (2) 435.

The receiver does not question the validity of the delivery as a pledge of the Salt River Valley

Water Users' Association bonds on April 10, 1931, to secure the deposit of the county in said Nogales Bank. He does, however, contend that the delivery and pledge of the bonds of the Nogales National Bank prior to June 25, 1930, was ultra vires and illegal, and that the county of Santa Cruz and the Treasurer thereof had no right to the same or the proceeds thereof.

Prior to said amendment of 1930, a National Bank could not legally pledge its assets to secure funds of a state or a political subdivision thereof. *Marion v. Sneed*, 291 U. S. 262. The Supreme Court is emphatic in the view that the power did not exist prior to said amendment and the question is no longer an open one. In *Marion v. Sneed*, a pledge of a National Bank subsequent to the passage of said amendment was held illegal for the reason that Illinois banks are not authorized to pledge their assets under the laws of said State. In *Texas and Pacific Railroad Co. v. Pottorff*, 291 U. S. 245, a pledge by a National Bank made subsequent to said amendment to secure a private deposit was held illegal as unauthorized by said amendment, and in *U. S. Shipping Board et al v. Rhodes*, 79 Fed. 2d, 146, U. S. Supreme Court, October Term, Pledges made to secure deposits of the U. S. Fleet Corporation and the Alien Property Custodian were held invalid as not being public moneys specified in said amendment. In the instant case, the bonds delivered by the Nogales Bank in 1928, to the New

York Bank remained with the latter in escrow for seventeen months after the passage of said amendment and for four months after the closing of the bank and no demand was made by the receiver for the return of the bonds until [45] January 21, 1936, and no change was made in the amount remaining on deposit in said bank to the credit of the county of \$50,000.00 from June 1, 1928, to date. The Act of June 25, 1930, was not retroactive. *Ross Receiver v. Lee*, Comptroller, U. S. District Court, Southern District of Florida, not yet reported. In that case all transactions had been completed and the bank closed and a receiver appointed prior to the passage of the enabling act. On June 25, 1930, the Nogales Bank was solvent and a going concern. On April 10, 1931, the New York Bank returned to the Nogales Bank the Water Users' Association Bonds deposited with it March 14, 1921, and on the same date the Nogales Bank delivered to the New York Bank other Water Users' Association bonds to be held by said New York Bank as specified in the receipt issued for said bonds. This constitutes the only transaction between the Nogales Bank and the Treasurer of said Santa Cruz County other than the retention of the deposits subsequent to the enactment of the amendment of June 25, 1930, and the closing of the bank.

The plaintiff relies on *Lewis v. Fidelity Co.*, 292 U. S. 559, and *Kavanaugh v. Fash*, *supra*. In the *Lewis* case a bond executed in 1928 for the period of four years was held vitalized by said amendment

and effective without the formality of executing a new bond for subsequent deposits of public money, the transaction being contemplated by the parties as a continuing one in which they intended that the lien should be operative for the period of the bond. The decision leaves unanswered the precise question whether the amendment would have validated the lien in respect to deposits made before that date. In *Kavanaugh v. Fash*, *supra*, the Circuit Court of Appeals of the Tenth Circuit held that said enabling act vitalized the previously made pledge with respect to money deposited after it became effective, but the case was disposed of on the pleadings though the answer disclosed a repledging of the bonds subsequent to June 25, 1930.

Where the right to pledge securities by a National Bank has been denied the basis of such denial has been the lack of power in the bank to do so; *Texas & Pacific Co. v. Pottorff*, *supra*, and cases there cited. Likewise the pledge cannot be ratified by the [46] parties because it could not be authorized by them. No performance can give it any validity or be the foundation of any right of action upon it. *Central Transportation Co. v. Pullman Car Co.* 139 U. S. 24; *Texas & Pacific Railroad Co. v. Pottorff*, *supra*. In the instant case, the pledge was made before the power to make the pledge existed in the bank. The pledge was intended as a continuing one to run until the repayment of the deposits, and extended until the closing of the bank in De-

ember 1931, seventeen months after the amendment became effective. The appointment of the depository was within the power of the state to confer and the bank to accept, but by reason of the paramount Federal law the pledge could not arise. When that obstacle was removed by the amendment the original agreement could as to the future have full effect. *Lewis v. F. & D. Co.*, supra, "The plain purpose of the amendment was to remove any doubt of the power of National Banks to give security for public deposits, and in that respect to enable them to invite public deposits on an equal footing with state banks." *Capital Savings and Loan Association v. Olympia National Bank*, 80 Fed. 2d 561. (9th Cir). Upon the passage of the amendment the Nogales National Bank was empowered to pledge its security and to ratify an executory or continuing pledge, previously beyond its power. It was not necessary to go through the formality of executing a new pledge. *Lewis v. F. & D. Co.*, supra. It seems apparent that the retention of the deposit by the bank, and the holding of the security intended to secure the former, for seventeen months after the bank was authorized to enter into just such a transaction as this, constituted a ratification of the delivery of the securities for the purposes intended by the parties of securing the deposits left by the county in the Nogales Bank.

Since this case was heard and submitted, a case in which the same questions were presented, decided

on February 29, 1936, has come to our attention, viz., *Ross v. Knott*, 13 Fed. Sup. 936, in which it is held that a pledge made by a National Bank prior to June 25, 1930, was effective to secure the balance of deposits made before the act was passed, remaining with the bank on its closing subsequent to the act. In disposing of the question as [47] to deposits remaining on hand at the time of the amendment, the Court says:

“To say that the original agreement of the parties may be given the effect intended as to deposits made after June 25, 1930, but not as to unpaid balances remaining on deposit after that date is to sacrifice equitable principles upon the altar of tenuous distinction. In each situation, the relation of the bank and the depositor is the same, that of debtor and creditor.”

It seems that the reasoning in the case of *Ross v. Knott*, *supra*, following that of *Lewis F. & D. Co.*, *supra*, is sound and should be followed in this case. The plaintiff is therefore entitled to foreclose its lien on the pledged bonds to satisfy the amount of said deposit remaining unpaid, accounting to said defendant, and paying to the defendant any overplus therefrom and to return to the defendant bonds remaining unsold upon satisfaction of said balance of said deposit. As the right to foreclose the county's lien on said bonds existed and inured to the plaintiff at the time of the closing of the bank, no interest

is allowable on the balance remaining unpaid subsequent to said date. The relief prayed for in the counterclaim will be denied and the action as to the defendants Ackley and Dumbauld dismissed.

Findings and a form for decree may be submitted in accordance with the foregoing.

Dated this 21st day of July, 1936.

ALBERT M. SAMES,

Judge.

[Endorsed]: Filed Jul. 21, 1936. [48]

[Title of Court.]

May 1936 Term

At Tucson

Minute Entry of Tuesday, July 21, 1936.

(Tucson Equity Minutes)

Honorable ALBERT M. SAMES, Judge United States District Court, Presiding.

[Title of Cause.]

ORDER FOR DECREE.

This cause having been heretofore submitted and by the Court taken under advisement and the Court having duly considered the same and being fully advised in the premises,

IT IS ORDERED that a Decree be entered in favor of the Plaintiff as against the Defendant W. J. Donald, as receiver of The Nogales National Bank, a national banking association, and that this case be dismissed as to the Defendants Anna B.

Ackley, as Treasurer of Santa Cruz County, Arizona, and A. Dumbauld, and that an exception be entered on behalf of W. J. Donald, as Receiver of The Nogales National Bank.

IT IS FURTHER ORDERED that counsel for the Plaintiff prepare Findings of Fact, Conclusions of Law and Decree accordingly for the signature of the Court. [49]

[Title of Court and Cause.]

ORDER.

Upon stipulation of the parties, and good cause existing therefor, it is

ORDERED that C. E. Hull as Receiver of The Nogales National Bank, a national banking association, be and he hereby is substituted as defendant in the above entitled action in the place of defendant, W. J. Donald, as Receiver of The Nogales National Bank, a national banking association.

Dated this 29th day of July, 1936.

By the Court:

ALBERT M. SAMES,

Judge of said District Court.

[Endorsed]: Filed Jul. 29, 1936. [50]

[Title of Court and Cause.]

OBJECTIONS TO JUDGMENT AND DECREE.

Comes now the defendant, by his attorney Stephen D. Monahan, and for objection to the proposed judgment and decree presented to this Court, urges the following:

1. That the findings beginning with line 24 of page 1 and ending with line 7 of page two are not in accordance with the law, in that the purported pledge was illegal and ultra vires.

2. That the said judgment and decree contains findings as to the details of the purported pledge beginning with the words "the condition" on line 25 of page 2 and ending with the word "interest" on line 30 of page 2 that are not in accordance with the agreed facts, in that there was no stipulation as to the condition of the illegal pledge.

3. That beginning with the words "on which" in line 1 of page 3 and ending with the words "became due and payable" is a conclusion of law that is incorrect and erroneous, in that on the declaration of insolvency and appointment of a receiver by the Comptroller of the U. S. Currency the assets of said bank passed to the Comptroller to be administered and distributed by him in accordance with the national banking act.

4. That the provisions in line 25 on page 3 for 6% interest from date of judgment is in contravention of this Honorable Court's [51] decision and

the law, in that no interest can be paid on this said deposit subsequent to insolvency.

5. That the finding beginning with the words "that since" on line 6 on page 3 and ending with the word "deposit" in line 10 of page 3, treats the sale of fifteen Pima County School District number One bonds of the par value of \$15,000.00 on December 27, 1932, by A. Dumbauld, the then County Treasurer, for the sum of \$14,257.16, as a payment by the receiver.

6. That the judgment beginning with line 16 of page 3 and extending to the end of said proposed judgment is erroneous and contrary to law in that it includes in its operations the bonds described as follows: beginning with line 27 of page 1 and extending through line 7 of page 2.

STEPHEN D. MONAHAN

Attorney for Defendant.

La Ville de Paris Bldg.

Nogales, Arizona.

[Endorsed]: Filed Aug. 17, 1936. [52]

[Title of Court.]

May 1936 Term

At Tucson

(Minute Entry of Monday, September 14, 1936.)

(Tucson Equity Minutes)

Honorable ALBERT M. SAMES, Judge, United States District Court, Presiding.

[Title of Cause.]

Plaintiff's proposed Judgment and Decree and Defendants' objections thereto come on regularly for hearing this day,

James V. Robins, Esquire, appears as counsel for the Plaintiff, and Stephen D. Monahan, Esquire appears as counsel for the Defendants, and Argument is now had by respective counsel, and

IT IS ORDERED that said proposed judgment and decree and defendant's objections thereto be submitted and by the Court taken under advisement. [53]

[Title of Court.]

May 1936 Term

At Tucson

Minute Entry of Wednesday, September 16, 1936.

Honorable ALBERT M. SAMES, Judge, United States District Court, Presiding.

[Title of Cause.]

Defendant's objections to plaintiff's proposed form of judgment and decree having been heretofore argued, submitted and by the Court taken under

advisement, and the Court having duly considered the same, and being fully advised in the premises,

IT IS ORDERED that defendant's objections one, two, three, five and six be and the same are hereby overruled, and that defendant's objection number four be and the same is hereby allowed.

Whereupon, judgment is entered as follows: [54]

In the District Court of the United States in and for the District of Arizona.

In Equity—E-234-Tucson.

SANTA CRUZ COUNTY, a body politic and corporate,

Plaintiff,

vs.

C. E. HULL, as Receiver of The Nogales National Bank, a national banking association, ANNA B. ACKLEY, as Treasurer of Santa Cruz County, Arizona, and A. DUMBAULD,
Defendants.

JUDGMENT AND DECREE.

This cause came on to be heard in its regular order on the 16th day of June, 1936, before the Court sitting without a jury, a trial by jury having been waived. The plaintiff and defendants Anna B. Ackley, as Treasurer of Santa Cruz County, Arizona, and A. Dumbauld appeared by their solicitor,

James V. Robins, and defendant, W. J. Donald, as Receiver of The Nogales National Bank, a national banking association, appeared by his solicitor, Stephen D. Monahan, Esq., whereupon the case was submitted to the Court for its deliberation and decision upon an agreed written statement of the case and the arguments of counsel. And the Court having duly considered the facts and the law, finds as follows:

That plaintiff, Santa Cruz County, is the owner and holder of a pledge lien upon the following described bonds, the property of the Receiver of said The Nogales National Bank, to-wit:

Twenty-one (21) City of Nogales Waterworks Improvement bonds issued by the City of Nogales, a municipal corporation in the State of Arizona, said bonds being of the denomination of One Thousand (\$1,000.00) Dollars each, numbered serially from twenty-three (23) to forty-three (43), both inclusive, dated December 1, 1927, bearing interest at the rate of four and one-half ($4\frac{1}{2}\%$) per cent. per annum payable on June 1 and December 1 of each year; together with the consecutively numbered coupons for the [55] payment of the interest upon said bonds and being attached to said bonds, in the sum of Twenty-two and 50/100 (\$22.50) Dollars each;

Also, nine (9) City of Nogales Sewage Disposal bonds issued by said City of Nogales, said

bonds being of the denomination of One Thousand (\$1,000.00) Dollars each, numbered serially from twelve (12) to twenty (20), both inclusive, dated December 1, 1927, bearing interest at the rate of four and one-half ($4\frac{1}{2}\%$) per cent. per annum, payable on June 1 and December 1 of each year; together with the consecutively numbered coupons for the payment of the interest upon said bonds and being attached to said bonds, in the sum of Twenty-two and 50/100 (\$22.50) Dollars each;

Also, two (2) bonds issued by Salt River Valley Water Users' Association, an Arizona corporation, known as "Stewart Mountain Water Project $5\frac{1}{2}\%$ Serial Gold Bonds", numbered M473 and M500, dated June 1, 1928, of the denomination of One Thousand (\$1,000.00) Dollars, each, bearing interest at the rate of five and one-half ($5\frac{1}{2}\%$) per cent. per annum, payable semi-annually on April 1 and October 1, of each year; together with seven (7) coupons in the sum of Twenty-seven and 50/100 (\$27.50) Dollars each attached to each of said bonds, numbered from fifteen (15) to twenty-one (21) both inclusive;

Also, three (3) bonds issued by said Salt River Valley Water Users' Association, numbered M1022 M1549 and M1550, dated February 1, 1923, of the denomination of One Thousand (\$1,000.00) Dollars each, bearing interest

at the rate of six (6%) per cent, per annum, payable semi-annually on February 1 and August 1 of each year, together with the consecutively numbered coupons for the payment of the interest in the sum of Thirty (\$30.00) Dollars each, attached to each of said bonds.

That said bonds and coupons are in the possession of the plaintiff.

That said bonds and coupons were pledged by said The Nogales National Bank to plaintiff as security for payment to plaintiff of the public monies and funds of plaintiff on deposit with said The Nogales National Bank, the condition thereof being that said The Nogales National Bank will promptly pay said public monies to the County Treasurer of said Santa Cruz County upon lawful demand therefor, and will, whenever thereunto required by law, pay to said County Treasurer such monies with interest. That said The Nogales National Bank was declared to be insolvent and a receiver thereof was appointed by the Comptroller of Currency of the United States on December [56] 16th, 1931, on which day the monies and funds of plaintiff so on deposit in the sum of Fifty Thousand (\$50,000.00) Dollars, together with interest thereon for the month of November, 1931, in the sum of One Hundred Sixty-six and 66/100 (\$166.66) Dollars, a total sum of Fifty Thousand One Hundred Sixty-six and 66/100 (\$50,166.66) Dollars, became due and payable. That since the closing and insolvency of

said The Nogales National Bank, the sum of Forty-four thousand One Hundred Ninety-eight and $41/100$ (\$22,198.41) Dollars has been paid to plaintiff upon said deposit, and that said deposit, secured by said pledge lien upon said bonds, remains unpaid in the sum of Five Thousand Nine Hundred Sixty-eight and $25/100$ (\$5968.25) Dollars.

And C. E. Hull, as Receiver of said The Nogales National Bank, having been substituted as defendant in this action in place of W. J. Donald, as such Receiver.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the amount so owing to plaintiff upon said deposit, to-wit, said sum of Five Thousand Nine Hundred Sixty-eight and $25/100$ (\$5968.25) Dollars, is secured by a pledge lien upon all of said bonds and coupons, and said lien is hereby foreclosed; that a special execution shall issue as provided by law and the rules of this Court, directing the Marshal to sell said bonds and coupons, or so much thereof as may be necessary to satisfy said sum of Five Thousand Nine Hundred Sixty-eight and $25/100$ (\$5968.25) Dollars and costs and accruing costs, as under execution; and that the proceeds of sale thereof be applied on said amount so due plaintiff, costs and accruing costs, and that the plaintiff, or any party to this suit, may become the purchaser or purchasers at said sale; and that all of said bonds and/or coupons so sold shall be delivered to the purchaser or

purchasers thereof, and that any of said bonds and coupons which shall not be so sold and any surplus of the proceeds of said sale after payment to plaintiff of the amount so due with interest, costs and accruing costs, shall be delivered to defendant, C. E. Hull as such Receiver.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover its costs herein taxed and allowed at the sum of.....

For all of which let execution issue.

Done in open Court this 16th day of September, A. D. 1936.

ALBERT M. SAMES

Judge of said District Court. [58]

(Plt'f Proposed Judg & Decree.)

[Endorsed]: Filed Aug. 19, 1936.

(Judgment and Decree.)

[Endorsed]: Filed Sep 16 1936. [59]

[Title of Court and Cause.]

STATEMENT OF EVIDENCE

1. That plaintiff, Santa Cruz County, is a body politic and corporate within the State of Arizona. That The Nogales National Bank was at all times herein mentioned a national banking association duly created, organized and existing under the laws of the United States and having its place of busi-

ness at the City of Nogales, Santa Cruz County, Arizona. That said banking association ceased doing business on December 1, 1931, and that said banking association was declared to be insolvent and a Receiver of said banking association was duly appointed by the Comptroller of Currency of the United States on December 16, 1931. That defendant, W. J. Donald, was duly appointed the Receiver of said banking association on February 11, 1932, to take effect at the close of business on February 13, 1932, by F. G. Awalt, acting Comptroller of the Currency of the United States. That thereupon said W. J. Donald took possession of all of the property and assets of said insolvent banking association and since February 13, 1932, has been, and now is the duly appointed, qualified and acting Receiver of said banking [60] association and all of its property and assets.

2. That said Anna B. Ackley was during the years 1925, 1926, 1927 and 1928 the duly elected, qualified and acting Treasurer of said Santa Cruz County; that during the years 1929, 1930, 1931 and 1932 A. Dumbauld was the duly elected, qualified and acting Treasurer of said County; that said Anna B. Ackley during the years 1933, 1934 and 1935 was and now is the duly elected, qualified and acting Treasurer of said County; that said Anna B. Ackley is a resident of Santa Cruz County, Arizona, and that said A. Dumbauld is a resident of Maricopa County, Arizona.

3. That heretofore, on January 3, 1925, the said Anna B. Ackley, as Treasurer, aforesaid, deposited

in The Nogales National Bank the sum of Thirty Thousand Seven Hundred Two and 67/100 (\$30,702.67) Dollars and that various and sundry amounts were so deposited from time to time by her until on or about May 7, 1928, when the total of said sums so deposited was the sum of Fifty Thousand (\$50,000.00) Dollars; that on January 2, 1929, the said sum was transferred on the books of said bank to the account of A. Dumbauld, as Treasurer of Santa Cruz County; that since June 1, 1928, no deposits of money or credits of any kind have been made in the said account; that the said account stood in the name of A. Dumbauld, as Treasurer aforesaid, at the time of the closing of said bank and the appointment of a Receiver therefor; that since January 2, 1933, the account has stood on the books of the said bank and now so stands in the name of Anna B. Ackley, as Treasurer of Santa Cruz County, aforesaid.

4. That said The Nogales National Bank was, prior to June 28, 1928, appointed and designated by the County Treasurer of Santa Cruz County, Arizona, with consent of the Board of Supervisors of said County, to be a depository of the monies of said County, and that said sum of Fifty Thousand (\$50,000.00) Dollars so deposited was money belonging to said County. That on June 28, 1928, said banking association delivered to The National City Bank of New York, [61] a banking association or corporation doing business in the City and State of New York, the following described bonds, together with the coupons thereto attached, to-wit:

Twenty-one (21) City of Nogales Waterworks Improvement bonds issued by the City of Nogales, a municipal corporation in the State of Arizona, for the purpose of acquiring funds to improve the water distribution system of said City; said bonds being of the denomination of One Thousand (\$1000) Dollars each, numbered serially from twenty-three (23) to forty-three (43), both inclusive, dated December 1, 1927, bearing interest at the rate of four and one-half ($4\frac{1}{2}\%$) per cent per annum payable on June 1 and December 1 of each year; together with the consecutively numbered coupons for the payment of the interest upon said bonds and being attached to said bonds in the sum of Twenty-two and $50/100$ (\$22.50) Dollars each, coupon number fifteen (15), the lowest numbered coupon attached to each of said bonds, being payable on June 1, 1935, and the highest numbered coupon attached to each of said bonds being payable on the same date as the bond to which the same is attached.

Also, nine (9) City of Nogales Sewage Disposal bonds issued by said City of Nogales for the purpose of acquiring funds to improve the sewage disposal system of said City, said bonds being of the denomination of One Thousand (\$1000) Dollars each, numbered serially from twelve (12) to twenty (20), both inclusive, dated December 1, 1927, bearing interest at the rate of four and one-half ($4\frac{1}{2}\%$) per cent per annum, payable on June 1 and December 1 of

each year; together with consecutively numbered coupons for the payment of the interest upon said bonds and being attached to said bonds in the sum of Twenty-two and 50/100 (\$22.50) Dollars each, coupon number fourteen (14), the lowest numbered coupon attached to each of said bonds, being payable on December 1, 1934, and the highest numbered coupon attached to each of said bonds being payable on the same date as the bond to which the same is attached.

That thereafter, on June 28, 1928, said The National City Bank of New York issued its escrow receipt set forth on pages five and six of the answer and counter-claim of defendant, W. J. Donald, as such Receiver.

5. That on March 14, 1928, said The Nogales National Bank delivered to said The National City Bank of New York fifteen (15) certain bonds of Pima County School District Number One of the aggregate par value of Fifteen Thousand (\$15,000.00) Dollars, and five (5) certain bonds of the Salt River Valley Water Users' Association of the aggregate par value of Five Thousand (\$5,000.00) Dollars, and thereupon said The National City Bank of New York issued the escrow receipt set forth on page four of the answer and counter-claim of defendant, W. J. Donald, as such Receiver. That thereafter on or about [62] April 10, 1931, said Salt River Valley Water Users' Association bonds

were redelivered to said The Nogales National Bank.

6. That on or about April 10, 1931, said The Nogales National Bank delivered to said The National City Bank of New York the bonds described in the receipt hereinafter set forth, whereupon said The National City Bank of New York issued therefor its receipt as follows:

“ESCROW RECEIPT

“We hereby acknowledge receipt from The Nogales National Bank, Nogales, Arizona, of the following securities:

“\$2,000 Salt River Valley Water Users’ Association Stewart Mountain Power Project 5½% Serial Gold Bond due Oct. 1, 1935 with Oct. 1, 1931 & X. C. A. No. M117, 116 for \$1,000 each.

“\$2,000 Salt River Valley Water Users’ Association Stewart Mountain Power Project 5½% Serial Gold Bond due Oct. 1, 1938 with Oct. 1, 1931 & S. C. A. No. M500, 473 for \$1,000 each.

“\$1,000 Salt River Valley Water Users’ Association 6% Gold Bond due Feb. 1, 1943 with August 1, 1931 & S. C. A. No. M1022 for *for* \$1,000 each.

“\$2,000 Salt River Valley Water Users’ Association 6% Gold Bond due February 1, 1946 with August 1, 1931 & S. C. A. Nos. M1549/50 for \$1,000 each,

to be held in escrow upon the following terms and conditions.

“1. To surrender all or any part of said securities at any time to said The Nogales National Bank, Nogales, Arizona, at its request, upon receipt of a statement in writing signed by the then County Treasurer of Santa Cruz County, Arizona, acknowledging that said Santa Cruz County has no interest in the securities so surrendered.

“2. To collect the interest coupons maturing on said securities so long as same remain in our possession hereunder, and to pay over the proceeds thereof to said The Nogales National Bank, Nogales, Arizona.

“3. To deliver any and all of such securities remaining in our possession hereunder at any time after the 10th day of April, 1931, to the then County Treasurer of Santa Cruz County, Arizona, upon his written demand therefor, to be held by said County Treasurer for the benefit of said Santa Cruz County, Arizona, and of said The Nogales National Bank, Nogales, Arizona, as their respective interest may appear, but without any responsibility on our part for any disposition thereof which may be made by him.

“4. We may at any time act in reliance upon the signature of any person purporting to act as County Treasurer, without liability of any kind

therefor, either to said Santa Cruz County, Arizona, or to said The Nogales National Bank, Nogales, Arizona, or to any other claimant, but we shall not be required to do so, and may in our discretion at any time require such evidence of the [63] signature and authority of such County Treasurer as may be satisfactory to our attorneys.

“5. We are not to be required to keep any of said securities insured against any risks whatever, nor are we to be responsible for the safekeeping of said securities except to give them the same care as we do our own property.

“6. The Nogales National Bank, Nogales, Arizona, is to pay any and all expenses which we may incur, and to indemnify and save us harmless against any and all loss and damages which we may suffer or sustain hereunder or in connection herewith.

“7. We may act in reliance upon advise of counsel in reference to any matters in connection with this escrow, and shall not be liable for any mistake of fact or error of judgment, or for any acts or omissions of any kind, unless caused by our own willful misconduct.

“Executed in duplicate, this 10th day of April, 1931.

“THE NATIONAL CITY BANK
OF NEW YORK.

By J. M. MORRISON,

Assistant Cashier.”

7. That the bonds hereinabove described with the coupons attached thereto were so delivered to said The National City Bank of New York by said The Nogales National Bank as security for payment of the public monies and funds of plaintiff so on deposit with said The Nogales National Bank. That all of said money was on deposit with said The Nogales National Bank for more than six months prior to the closing of said bank, but was subject to check or draft at all times.

8. That since the closing of said bank dividends have been paid to said Treasurer by said Receiver on the following dates and in the following amounts, to-wit:

August 8, 1932.....	\$13,545.00
December 26, 1933.....	5,016.67
November 23, 1934.....	4,013.33

Total \$22,575.00

9. That on or about April 4, 1932, all of the bonds then remaining in its possession were delivered to the County Treasurer of said County of said County by said The National City Bank of New York, and that none of said bonds, nor the proceeds thereof, (except as hereinabove set forth) have been delivered to said The Nogales National Bank, or its Receiver, but that all thereof which have not been sold or [64] paid are in the possession of the County Treasurer of said Santa Cruz County.

10. That on or about December 27, 1932, A. Dumbauld, as County Treasurer of said Santa Cruz County sold said Pima County School District bonds of the par value of Fifteen Thousand (\$15,000.00) Dollars on the market for the sum of Fourteen Thousand Two Hundred Fifty-seven and 16/100 (\$14,257.16) Dollars, said sum being the market value thereof at the time of such sale, and that the proceeds thereof are now in the possession of the present Treasurer of said Santa Cruz County.

11. That on or about October 1, 1933, said A. Dumbauld as such County Treasurer surrendered to Salt River Valley Water Users' Association for payment the Two Thousand (\$2,000.00) Dollars Salt River Valley Water Users' Association bonds numbered M117, 116, described in the escrow receipt above set forth on page four of this agreed statement of the case, and that said bonds were paid to said County Treasurer.

12. That since the date of closing said The Nogales National Bank, said deposit of Fifty Thousand (\$50,000.00) Dollars, with interest thereon from the month of November, 1931, in the sum of One Hundred Sixty-six and 66/100 (\$166.66) Dollars, has been credited on the books of said County Treasurer with the following sums received by said Treasurer on account of dividends upon said deposit, the sale of said bonds and payment of said bonds as hereinabove mentioned, and sums received by said Treasurer upon payment of interest coupons attached to said bonds, as follows:

April 11, 1932	\$ 110.00	
June 21, 1932	675.00	
August 8, 1932	13,545.00	
September 7, 1932	90.00	
October 20, 1932	375.00	
October 22, 1932	110.00	
December 2, 1932	675.00	
December 27, 1932	14,257.16	
May 3, 1933	90.00	
June 20, 1933	110.00	
June 20, 1933	675.00	
August 25, 1933	89.75	[65]
October 1, 1933	2,000.00	
October 5, 1933	54.46	
November 16, 1933	54.79	
December 8, 1933	675.00	
December 26, 1933	5,016.67	
February 19, 1934	90.00	
April 28, 1934	55.00	
August 14, 1934	89.75	
September 12, 1934	472.50	
November 22, 1934	202.50	
November 23, 1934	4,013.33	
December 31, 1934	55.00	
February 28, 1935	90.00	
April 20, 1935	55.00	
June 15, 1935	472.50	
	<hr/>	
Total	\$44,198.41	

and that said sum of Forty-four Thousand One Hundred Ninety-eight and 41/100 (\$44,198.41) Dol-

lars is now in possession of the present Treasurer of said Santa Cruz County. That no further payments or credits upon said account have been made.

13. That on January 21, 1936, the defendant W. J. Donald, as such Receiver, made demand for the return of said bonds or the proceeds thereof, on Anna Ackley and on A. Dumbauld each, by depositing in the United States Post Office, registry division, an envelope bearing the required United States postage, addressed to A. Dumbauld at his address in Phoenix, and a similar envelope addressed to Anna B. Ackley at Nogales, Arizona, and each envelope containing the following demand:

Anna B. Ackley,

Treasurer of Santa Cruz County

State of Arizona,

and

A. Dumbauld,

Ex-Treasurer of Santa Cruz County,

State of Arizona.

I hereby demand that you deliver up and return to me as the duly appointed, qualified and acting Receiver of The Nogales National Bank, an insolvent national banking association, the following described bonds held by you in violation of the National Banking laws of the United States of America:

Twenty-one Thousand (\$21,000) Dollars City of Nogales Waterworks Improvement bonds, 4½% due December 1, 1953, with December 1, 1928, and subsequent coupons attached, Nos.

23/43 for One Thousand (\$1,000) Dollars each, or the proceeds thereof if disposed of and any interest collected by you, or either of you. [66]

Nine Thousand (\$9,000) Dollars City of Nogales Sewage Disposal bonds 4 $\frac{1}{2}$ % due December 1, 1951, with December 1, 1928, and subsequent coupons attached Nos. 12/20 for One Thousand (\$1,000) Dollars each, or the proceeds thereof if disposed of and any interest collected by you, or either of you.

Fifteen Thousand (\$15,000) Dollars County of Pima School District No. 1 School Bldg. bonds 5% due March 1, 1939, with September, 1928, and subsequent coupons attached Nos. 17/31 interest payable March and September, One Thousand (\$1,000) Dollars each, or the proceeds thereof if disposed of and any interest collected by you, or either of you.

The above described bonds were and are the property of The Nogales National Bank of Nogales, Arizona, now insolvent.

Dated January 16, 1936.

W. J. DONALD,

Receiver of The Nogales National Bank of
Nogales, Arizona, an insolvent national
banking association.

That said A. Dumbauld and said Anna B. Ackley, and each of them, have failed and refused to deliver to said Receiver any of said bonds or the proceeds thereof.

14. That the answer and counter-claim of the defendant, W. J. Donald, as such Receiver, is filed by direction of the Comptroller of the Currency; that the amount involved, exclusive of interest and costs, exceed the sum of Three Thousand (\$3,000) Dollars; that said action is one for winding up the affairs of a national banking association, and that the action is one brought under the laws of the United States and involves the construction of a United States statute.

STIPULATION.

It is hereby stipulated by and between the plaintiff, Santa Cruz County, and the defendants, Anna B. Ackley and A. Dumbauld, by their attorney, James V. Robins, and the defendant, C. E. Hull as Receiver, by his attorney, Stephen D. Monahan, that the above and foregoing statement of evidence is a true and complete statement of the evidence upon which the above entitled cause was tried and that the same be accepted as such for the purposes of the record on appeal.

Dated November 20th, 1936. [67]

JAMES V. ROBINS,

Attorney for Santa Cruz County, Plaintiff,
and Anna B. Ackley and A. Dumbauld,
Defendants.

STEPHEN D. MONAHAN,

Attorney for Defendant, C. E. Hull, as Receiver of The Nogales National Bank, insolvent.

CERTIFICATE OF JUDGE TO STATEMENT
OF EVIDENCE.

On this 24th day of November, 1936, pursuant to stipulation of counsel for settlement and certification of the statement of facts in the foregoing entitled action, the undersigned Albert M. Sames, judge of said court presiding at the trial of said action, now and hereby settles the annexed and foregoing statement of evidence as the statement of facts in said action and hereby certifies:

That the above and foregoing action was tried before the court without a jury on the foregoing statement of evidence as an agreed statement of facts stipulated by counsel of all the parties thereto, and that there was no other evidence of any kind offered or received at the said trial, and that the same contains all of the evidence on which the said cause was tried and all the material facts, matters and proceedings heretofore occurring in said cause.

Done at Tucson, Arizona, this 24th day of November, 1936.

ALBERT M. SAMES,

Judge of U. S. District Court.

(Defts Proposed Statement of Evidence)

[Endorsed]: Filed Nov 23 1936.

(Statement of Evidence)

[Endorsed]: Filed Nov 24 1936. [68]

[Title of Court.]

November 1936 Term

At Tucson

Minute Entry of Tuesday, November 24, 1936

Honorable ALBERT M. SAMES, Judge, United States District Court, Presiding.

[Title of Cause.]

Pursuant to stipulation of counsel herein,

IT IS ORDERED that Defendant's proposed statement of evidence heretofore filed herein be and the same is hereby settled. [69]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS

The defendant, C. E. Hull, Receiver of The Nogales National Bank, a national banking association, in connection with and as a part of his petition for the allowance of an appeal filed herein, makes the following assignment of errors, which he avers were committed by the Court in the rendition of judgment against this defendant.

I.

The judgment of the Court below is contrary to law.

II.

The judgment of the Court below is contrary to the agreed statement of facts.

III.

The Court below erred in finding that the plaintiff, Santa Cruz County, is the owner and holder of a pledge lien upon the following described bonds, the property of the Receiver of said The Nogales National Bank, to-wit:

Twenty-one (21) City of Nogales Waterworks Improvement bonds issued by the City of Nogales, a municipal corporation in the State of Arizona, said bonds being of the denomination of One Thousand (\$1,000.00) Dollars each, numbered serially from twenty-three (23) to forty-three [70] (43), both inclusive, dated December 1, 1927, bearing interest at the rate of four and one-half ($4\frac{1}{2}\%$) per cent per annum payable on June 1 and December 1 of each year; together with the consecutively numbered coupons for the payment of the interest upon said bonds and being attached to said bonds, in the sum of Twenty-two and $50/100$ (\$22.50) Dollars each;

Also, nine (9) City of Nogales Sewage Disposal Bonds issued by said City of Nogales, said bonds being of the denomination of One Thousand (\$1,000.00) Dollars each, numbered serially from twelve (12) to twenty (20), both inclusive, dated December 1, 1927, bearing interest at the rate of four and one-half ($4\frac{1}{2}\%$) per cent. per annum, payable on June 1 and December 1 of each year; together with the consecutively numbered coupons for the payment of the interest upon said bonds and being

attached to said bonds, in the sum of Twenty-two and 50/100 (\$22.50) Dollars each;

IV.

The Court below erred in finding that said bonds and coupons were pledged by said The Nogales National Bank to plaintiff as security for payment to plaintiff of the public monies and funds of plaintiff on deposit with said The Nogales National Bank, the condition thereof being that said The Nogales National Bank, will promptly pay said public monies to the County Treasurer of said Santa Cruz County upon lawful demand therefor, and will, whenever thereunto required by law, pay to said County Treasurer such monies with interest.

V.

That Court below erred in finding that since the closing and insolvency of said The Nogales National Bank, the sum of Forty-four Thousand One Hundred Ninety-eight and 41/100 (\$44,198.41) Dollars has been paid to plaintiff upon said deposit, and that said deposit, secured by said pledge lien upon said bonds, remains unpaid in the sum of Five Thousand Nine Hundred Sixty-eight and 25/100 (\$5,968.25) Dollars.

VI.

The Court below erred in ordering, adjudging and decreeing that the amount of Five Thousand Nine Hundred Sixty-eight and 25/100 (\$5,968.25) Dollars (or any other amount) is secured by a pledge lien upon all of said bonds and coupons, and

said lien is hereby [71] foreclosed; that a special execution shall issue as provided by law and the rules of this Court, directing the Marshall to sell said bonds and coupons, or so much thereof as may be necessary to satisfy said sum of Five Thousand Nine Hundred Sixty-eight and 25/100 (\$5,968.25) Dollars with costs, and accruing costs as under execution, and that proceeds of sale thereof be applied on said amount so due plaintiff, with costs and accruing costs.

VII.

The Court below erred in not finding that fifteen (15) certain bonds of the County of Pima school district No. 1, school building bonds bearing five (5%) per cent interest due March 1, 1939, with coupons attached, numbers 17 to 31 inclusive, of the par value of One Thousand (\$1,000.00) Dollars each or the proceeds thereof, the sum of Fourteen Thousand Two Hundred Fifty-seven and 16/100 (\$14,257.16) Dollars, are the property of the said The Nogales National Bank and in not ordering, adjudging and decreeing that such bonds or the said proceeds thereof be delivered to this defendant as receiver aforesaid.

VIII.

The Court below erred in not finding that the said twenty-one (21) City of Nogales Waterworks Bonds together with coupons attached and interest on the said bonds heretofore collected by the plaintiff, Santa Cruz County, its officers and agents, and the

said nine (9) City of Nogales Sewage bonds, together with coupons attached and interest on the said bonds heretofore collected by the plaintiff, Santa Cruz County, its officers and agents, are the property of the said The Nogales National Bank and in not ordering, adjudging and decreeing that such bonds, coupons, and interest so collected, be delivered to this defendant as receiver aforesaid.

STEPHEN D. MONAHAN,

Attorney for Defendant. [72]

I hereby accept service of the foregoing assignment of errors and acknowledge receipt of a true copy thereof at Nogales, within the District of Arizona, this 23 day of September, 1936.

JAMES V. ROBINS,

Attorney for Plaintiff. H

[Endorsed]: Filed Sep 24 1936. [73]

[Title of Court and Cause.]

PETITION.

To Honorable Albert M. Sames, Judge United States District Court, District of Arizona:

Comes now the defendant C. E. Hull, Receiver, and represents to the Court that on the 16th day of September, 1936, this Court entered a judgment and decree in favor of the plaintiff and against this defendant in the entering of which said judgment

and decree, certain errors were committed to the prejudice and injustice of this defendant, all of which will appear in detail from the assignment of errors which is filed with this petition.

WHEREFORE, this defendant prays that he may be allowed an appeal of this cause to the United States Circuit Court of Appeals for the Ninth Circuit so that said errors, so complained of may be corrected, and that a transcript of this record, proceedings and documents in this cause, duly authenticated, may be sent to and filed with the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California, within said circuit, for its consideration, as does the law and the rules of such Court in such cases made and provided, require. [74]

Said defendant further prays that, whereas this appeal is made by direction of the Comptroller of the United States Currency, an Order be entered directing that this defendant and appellant be not required to file a cost bond herein.

STEPHEN D. MONAHAN,

Attorney for Defendant.

I hereby accept service of written Petition for Appeal and acknowledge receipt of a true copy thereof at Nogales within the District of Arizona, this 23 day of September, 1936.

JAMES V. ROBINS,

Attorney for Plaintiff.

H

[Endorsed]: Filed Sep. 24, 1936. [75]

[Title of Court.]

May 1936 Term

At Tucson

Minute Entry of Monday, October 5, 1936

Honorable ALBERT M. SAMES, Judge, United States District Court Presiding.

[Title of Cause.]

Defendant's Petition for Appeal comes on regularly for hearing this day.

Stephen D. Monahan, Esquire, appears as counsel for the Defendant and no counsel appears for the Plaintiff.

IT IS ORDERED that Defendant's Petition for Appeal be and the same is hereby granted.

Whereupon, the following order is entered: [76]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

The defendant, C. E. Hull, Receiver, aforesaid, having within the time prescribed by law, duly filed herein his Petition for Appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final judgment and decree of the above entitled District Court, made and entered in the above numbered and entitled cause under date of the sixteenth day of September, 1936, in favor of the Plaintiff and against the said Defendant.

It is ordered that the defendant's appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decree of the District Court hereinabove referred to, be, and the same is, hereby allowed;

It is further ordered that a certified transcript of so much of the record as may be requested by proper praecipe therefore be, by the Clerk of this Court, upon the filing of such praecipe, transmitted to said United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California.

It is further ordered, that this Appeal having been directed by the Comptroller of the United States Currency, that no bond be required. [77]

Done in open court this fifth day of October, 1936.

ALBERT M. SAMES.

Judge, United States District Court,
District of Arizona.

I hereby acknowledge and accept service of the foregoing Order Allowing Appeal and acknowledge receipt of a true copy thereof at Nogales, within the District of Arizona, this day of, 1936.

.....,
Attorney for Plaintiff.

[Endorsed]: Filed Oct. 5, 1936. [78]

[Title of Court and Cause.]

ACCEPTANCE OF SERVICE.

Due service of the following described papers and pleadings in the above entitled cause is hereby accepted this 24 day of November, 1936, to-wit:

- Petition for appeal
- Order allowing appeal
- Assignment of error
- Citation on appeal
- Statement of evidence.

JAMES V. ROBINS,

Attorney for plaintiff Santa Cruz County and
Defendants Anna B. Ackley and A. Dumbauld.

[Endorsed]: Filed Nov. 24, 1936. [79]

[Title of Court and Cause.]

PRAECIPE FOR RECORD ON APPEAL.

To the Clerk of the above entitled Court:

YOU ARE HEREBY DIRECTED to prepare and certify a transcript of the record in the above entitled cause for the use of the United States Circuit Court of Appeals for the Ninth Circuit and to include therein the following:

1. Plaintiff's complaint.
2. Defendant's petition for removal to Federal Court.
3. Removal bond.
4. Order for removal.

5. Notice of filing record in the United States District Court.

6. Answer, separate defense of W. J. Donald and counterclaim.

7. Order making Anna B. Ackley and A. Dumbauld additional parties defendant.

8. Answer of Anna B. Ackley to complaint.

9. Answer of A. Dumbauld to complaint.

10. Answer of Santa Cruz County to separate defense and counterclaim of defendant.

11. Answer of Anna B. Ackley to separate defense and counterclaim of defendant.

12. Answer of A. Dumbauld to separate defense and counterclaim of defendant. [80]

13. Memorandum decision.

14. Judgment and decree.

15. Objections to judgment and decree.

16. Petition for appeal.

17. Assignment of error.

18. Appeal order.

19. Order substituting C. E. Hull for W. J. Donald as defendant.

20. Transcript of minute entries.

21. Statement of evidence.

22. Citation on appeal.

23. Praecipe for transcript.

24. Acceptance of service.

25. Notice of filing praecipe for record on appeal and all other records, entries, pleadings, proceedings, papers and filings necessary or proper to make a complete record upon said appeal as re-

quired by law and the rules of this court and the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 24 day of November, 1936.

STEPHEN D. MONAHAN.

Attorney for defendant C. E. Hull, Receiver.

Received a copy of the above and foregoing praecipe for record on appeal this 24 day of November, 1936.

JAMES V. ROBINS,

Attorney for plaintiff Santa Cruz County and
defendants Anna B. Ackley and A. Dumbauld.

[Endorsed]: Filed Nov. 24, 1936. [81]

[Title of Court and Cause.]

NOTICE OF FILING PRAECIPE FOR
RECORD ON APPEAL.

To the plaintiff Santa Cruz County and to the defendants Anna B. Ackley and A. Dumbauld and to James V. Robins, their Attorney:

YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE THAT on the 24 day of November, 1936, the undersigned filed with the Clerk of the United States District Court for the District of Arizona a praecipe for the record to be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, upon appeal taken by the said defendant in the above numbered and entitled cause,

a copy of which praecipe is herewith served upon you.

Dated this 24 day of November, 1936.

STEPHEN D. MONAHAN,
Attorney for defendant C. E. Hull, Rec.

I hereby accept service of the above and foregoing notice and acknowledge receipt of a true copy together with a copy of the praecipe mentioned herein.

JAMES V. ROBINS,
Attorney for plaintiff Santa Cruz County and
defendants Anna B. Ackley and A. Dumbauld.

[Endorsed]: Filed Nov. 24, 1936. [82]

[Title of Court.]

CLERK'S CERTIFICATE TO TRANSCRIPT
OF RECORD.

United States of America,
District of Arizona—ss:

I, Edward W. Scruggs, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the Custodian of the records, papers and files of the said Court, including the records, papers and files in the case of Santa Cruz County, a body politic and corporate, Plaintiff, versus W. J. Donald, as Receiver of The Nogales National Bank, a national banking association, Anna B. Ackley, as Treasurer of Santa Cruz County, Arizona and A. Dumbauld, Defendants, numbered E-234-Tucson on the docket of said Court.

I further certify that the attached pages, numbered 1 to 86, inclusive, contain a full, true and correct transcript of the proceedings of said cause and all the papers filed therein, together with the endorsements of filing thereon, called for and designated in the praecipe filed in said cause and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk, in the City of Tucson, State and District aforesaid.

I further certify that the Clerk's Fee for preparing and certifying to this said transcript of record amounts to the sum of \$17.40 and that said sum has been paid to me by counsel for the appellant.

I further certify that the original citation issued in the said cause is hereto attached and made a part of this record.

WITNESS my hand and the Seal of the said Court this tenth day of December, 1936.

[Seal] EDWARD W. SCRUGGS,
Clerk. [83]

[Title of Court and Cause.]

CITATION ON APPEAL.

The President of the United States of America to
Santa Cruz County, a body politic and corporate, GREETING:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Ap-

peals for the Ninth Circuit at San Francisco, California, within thirty days from the date of this writ, pursuant to an order allowing the appeal duly made, entered and filed in the office of the Clerk of the above named District Court, under date of the 5th day of October, 1936, which said appeal is from the final decree of said District Court in the above numbered and entitled cause, made and entered under date of the 16th day of September, 1936, wherein C. E. Hull, Receiver of the Nogales National Bank of Nogales, Arizona, a national banking association, is defendant and appellant and you are plaintiff and appellee, to show cause, if any there be, why said judgment and decree rendered against said defendant and appellant should not be reversed and set aside and why justice should not be done to the parties on that behalf.

WITNESS the Honorable Albert M. Sames, United States District Judge for the District of Arizona, this 24th day of November, 1936, A. D., and of the Independence of the United States of America the One Hundred Sixty-first.

[Seal]

ALBERT M. SAMES,

Judge of the United States Dist. Court
in and for the Dist. of Ariz. [84]

I hereby accept service of the within citation on appeal and acknowledge receipt of a true copy thereof and personal service of citation at Nogales, Arizona, this 24th day of November, 1936.

JAMES V. ROBINS,

Attorney for plaintiff Santa Cruz County and
defendants Anna B. Ackley and A. Dumbauld.

[Endorsed]: Filed Nov. 24, 1936. [85]

[Endorsed]: No. 8408. United States Circuit Court of Appeals for the Ninth Circuit. C. E. Hull, Receiver of the Nogales National Bank of Nogales, Arizona, a national banking association, Appellant, vs. Santa Cruz County, a body politic and corporate, Appellee. Transcript of Record upon Appeal from the District Court of the United States for the District of Arizona.

Filed December 11, 1936.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

